

MASTER DEED

BLANCHARD PLACE CONDOMINIUM

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MASTER DEED  
OF  
BLANCHARD PLACE CONDOMINIUM

The undersigned Declarant (as hereinafter defined), being the sole owner of the land in Acton, Middlesex County, Massachusetts described in Exhibit A attached hereto and made a part hereof, by duly executing and recording this Master Deed, does hereby submit said land together with the buildings and improvements and all easements, rights and appurtenances belonging thereto to the provisions of the Act (as hereinafter defined) and proposes to create, and hereby does create with respect to said premises, a Condominium to be governed by and subject to the provisions of the Act, and to that end the Declarant declares and provides the following:

1. Definitions and Condominium Phasing

A. Definitions.

The following terms shall have the following meanings in this Master Deed and in the Declaration of Trust of Blanchard Place Condominium Trust:

The Act shall mean Massachusetts General Laws, Chapter 183A ("Condominiums"), as amended.

The Condominium shall mean the Condominium created by this Master Deed.

Condominium Land shall mean land which has been made a part of the Condominium by this Master Deed, or added to the Condominium by amendment to this Master Deed.

The Condominium Trust shall mean the Blanchard Place Condominium Trust, the unit owners' organization formed pursuant to the Act.

Declarant shall mean Blanchard Place, LLC of 411 Massachusetts Avenue, Acton, Massachusetts 01720 and its successors and assigns (except as limited as set forth in the definition of "successors and assigns" hereinbelow).

Open Space Land shall mean that portion of the land which is a part of the Condominium designated in the Site Plan as "Open Space". "Common Area" shall have

the same meaning as Open Space Land for purposes of said Master Deed.

Owner shall have the same meaning as the term "Unit Owner" in Section 1 of the Act.

Site Plan shall mean a plan entitled, "\_\_\_\_\_" dated \_\_\_\_\_, prepared by Foresite Engineering Associates, Inc., recorded with the Middlesex South District Registry of Deeds as Plan #\_\_\_\_ of 2006. Land shown on the Site Plan is not a part of the Condominium unless and until expressly added to the Condominium by this Master Deed or an amendment hereto.

Successors and assigns shall mean the successors and assigns of the Declarant, but the term "successors and assigns" specifically excludes grantees of unit deeds and unit mortgages. The fact that a grantee acquires one or more Units in a unit deed or mortgage shall not render such grantee the successor or assign of the Declarant unless such deed, mortgage or other instrument, referring specifically to this Section 1A of this Master Deed, so states.

Unit shall mean a Condominium Unit as that term is defined in Section 1 of the Act.

B. Condominium Phasing.

The Condominium is to be developed as a phased condominium, each phase of which shall include one or more building(s) containing one or more Units or one or more common facilities or elements or combinations thereof.

Paragraph 16 hereof sets forth the procedure whereby the Declarant may amend this Master Deed, without the need for the consent (except as in said paragraph 16 already granted) or signature of any owner, or any mortgagee or any trustee of the Condominium Trust, or any person claiming by, through, or under any owner (including the holder of any mortgage or other encumbrance with respect to any unit) or any other party, so as to add additional land and additional phases and additional Units to the Condominium. Said paragraph 16 also describes certain limitations on the Declarant's said rights to add additional land, additional phases and additional Units.

2. Name

The name of the Condominium shall be the "BLANCHARD PLACE CONDOMINIUM" (hereinafter sometimes referred to as the "Condominium").

3. Description of Land and Use Description

The Condominium has been approved by the Zoning Board of Appeals of the Town of Acton \_\_\_\_\_, and entitled "Town of Acton, Massachusetts Zoning Board of Appeals Decision Upon Application of Blanchard Place, LLC For A Comprehensive Permit" (the "Decision") and consists of two types of land use, residential and open space. The project will be comprised of three (3) residential buildings each housing four (4) Units (12 Total Units) on the Condominium Land located along Prospect Street as shown on the Site Plan. The 12 Units will be served by Town Sewers.

The land upon which the building(s) and improvements are, situated is described in Exhibit A attached hereto and made a part hereof.

4. Description of Buildings

The building(s) (hereinafter the "building or building(s)") on the Condominium Land are described in Exhibit B attached hereto and made a part hereof, as said Exhibit B may hereafter be amended as additional phase(s) are added to the Condominium pursuant to paragraph 16 hereof.

5. Designation of the Units and Their Boundaries

- (a) The Condominium consists of twelve (12) Units, each being a condominium building unit located on the land described in Exhibit A. The designations, locations, approximate areas, number of rooms, immediately accessible common areas and facilities and other descriptive specifications of each of the Units are set forth in Exhibit B, attached hereto, and as shown on the site and floor plans of the Condominium, to be recorded from time to time. The said floor plans show the layout, locations, Unit numbers and dimensions of the Units as built, indicate that the buildings are named "BLANCHARD PLACE CONDOMINIUM" and otherwise have \_\_\_\_\_ and bear the verified statement of a Registered Architect, all as required by the provisions of Section 6 of the Act.

- (b) All Units are heated by means of a separate heating, ventilating and air conditioning system, all portions of which whether located within or without the unit, are a part of the unit which it serves.
- (c) Each Unit includes the ownership of all utility installations (including but not limited to a hot water heater) contained therein or set aside for the exclusive use of said Unit, which exclusively serve the Unit.
- (d) Each Unit shall have as appurtenant thereto the right and easement to use, in common with the Units served thereby, all utility lines and other common facilities which serve it, but which are located in or pass through the streets and ways shown on the Site Plan herein referred to, the common areas and facilities, or other Units.
- (e) Each Unit shall have as appurtenant thereto the exclusive right and easement to use and enjoy certain portions of the Common Areas and Facilities, including patios and decks immediately adjacent to said Unit, if any are shown on the final Site Plan.
- (f) Each Unit shall have as appurtenant thereto the right to use the Common Areas and Facilities, as described in paragraph 6 hereof, in common with the other Units in the condominium.
- (g) The boundaries of the Units are as follows:
  - (i) Floor: the upper surface of the concrete basement floor or concrete first floor, for Units without basements.
  - (ii) Ceiling: the plane of the lower surface of attic roof rafters.
  - (iii) Interior Building Walls Between the Units: the plane of the interior surface of the wall studs facing each Unit.
  - (iv) Exterior Building Walls, Doors and Windows: the planes of the interior surface of the wall studs or in case of a concrete wall, the interior surface of said concrete wall; as to doors, the exterior surface thereof and the exterior surface of the door frames; as to windows, the exterior surface of the glass and window frames.

6. Common Areas and Facilities

The Common Areas and Facilities of the Condominium shall consist of the land described in paragraph 3 hereof, including all improvements located thereon other than the Units, subject to easements and rights of certain Unit Owners to Units as set forth in paragraph 8 hereof. Without limiting the foregoing language, the Common Areas and Facilities of the Condominium comprise and consist of:

- (a) In general any and all apparatus, equipment and installations existing for common use.
- (b) (i) all pipes, conduits, controls, ducts, plumbing, equipment and other facilities for the furnishing of sewer service and all sewer and drainage pipes, and all appurtenances thereto located outside the Units that serve parts of the Condominium other than a specific Unit exclusively; (as to utility conduits, lines, pipes and wires, the right and easement to use the same shall be included as part of the Common Areas and Facilities) all pipes constituting the sewer collection system and the related appurtenances and easements for sewer lines, and other appurtenances relating thereto. The Common Land shall be a portion of the Common Areas and Facilities of the Condominium. The Condominium Trust shall have the right at any time and from time to time to change the location of any portion of the Sewer System, whether located on the Condominium Land, and the Condominium Trust shall have an easement to go in, upon, over and under all parts of the Condominium (including but not limited to the Units and any areas designated for the exclusive use of Owners of certain Units including but not limited to Units as defined in paragraph 8 hereto) in order to fulfill its responsibilities with respect to the operation, use, maintenance, repair and replacement of the Sewer System. Notwithstanding the foregoing, it shall be the sole responsibility of each Unit Owner to Sewer System located in the Unit and serving the Unit exclusively. The Condominium Trust shall have the right to enter the Unit to perform any such maintenance, repairs, and replacement which it deems necessary if not performed by an Owner.

(ii) Until the expiration or earlier termination of the phasing rights as more particularly described in paragraph 16, each owner of a Unit shall pay 1/12th of the Septic Expenses, whether or not (a) a Unit has been constructed or (b) the Unit (if any) has been added to the Condominium. Septic Expenses shall be pro rated among the owners for any portion of a fiscal year in which a Unit is conveyed.

(iii) No Unit shall contain more than three bedrooms, as "bedroom" is currently defined by the Acton Board of Health or by Title V, as may be amended, which ever is stricter.

Any rule or regulation adopted by the Condominium Trust which relates to the Sewer System shall require the prior written approval of the Acton Board of Health.

The use or maintenance of the Common Areas and Facilities including the Sewer System in a manner contrary or inconsistent with any applicable statute or any rule or regulation of the DEP or Acton Board of Health is hereby prohibited.

Unit Owners shall be responsible for insuring that the Trustees of the Condominium Trust comply with all applicable statutes, regulations or permit conditions relating to the Sewer System.

- (c) The lawns, plants, shrubbery, landscaping, driveways, emergency access road, roads and walkways on the Condominium Land referred to in clause (a) hereof, and the improvements thereto and thereof.
- (d) All recreational facilities, if any, on the premises of the Condominium not situated within a Unit.
- (e) All other elements and features of the Condominium property, however designated or described, excepting only the Units and all other items, listed as Common Areas and Facilities in Section 2 of the Act and located on the premises and not intended to remain



The Common Areas and Facilities shall be subject to the provisions of the by-laws of the Condominium Trust, and to all rules and regulations promulgated pursuant thereto with respect to the use and maintenance thereof.

With respect to parking spaces not specifically designated for use by a Unit, the same shall be available for occasional use by all Owners of Units, their tenants and their guests, subject to and in accordance with the by-laws and rules and regulations of the Condominium Trust.

In addition to and not in limitation of the rights of Owners as elsewhere herein set forth and as provided in the Act, the Owner or Owners of each Unit shall have, as appurtenant to such Unit, the rights and easements, in common with the Owners of all other Units and subject to like rights and easements appurtenant to such other Units, to use the common areas and facilities, including without limiting the generality thereof, all roads, driveways, walkways, paths, conduits, pipes, plumbing, cables, and other facilities for the furnishing of utilities and services, subject always, however to, (a) the exclusive rights and easements herein granted to particular Units in certain facilities; (b) the restrictions and other provisions herein set forth; and (c) the rules and regulations promulgated by the Board of Trustees of the Condominium Trust.

The Trustees of the Condominium Trust have, and are hereby granted, the right of access, at reasonable times and consistent with the comfort, convenience and safety of owners, to such areas of each Unit as reasonably need to be entered for purposes of operation, inspection, protection, maintenance, repair and replacement of common areas and facilities, and correction, termination, and removal of acts or things which interfere with the common areas and facilities or are otherwise contrary to or in violation of the provisions hereof, and also a right of access for making emergency repairs as provided for in the Act.

The Trustees of the Condominium Trust shall also have, and are hereby granted, the exclusive right and obligation to maintain, repair, replace, add to, and alter the roads, ways, paths, walks, utility and service lines and facilities, lawns, trees, plants and other landscaping comprised in the Common Areas and Facilities, and not a part of a Unit, and to make excavations for such purposes; and no Owner shall do any of the foregoing in an area other than that set aside for said Unit's exclusive use without the prior written permission of said Trustees in each instance.

In the event that the drainage system or part thereof outside of the roadway right-of-way for any reason deteriorates

to the extent that it is not reasonably suitable for the purposes originally intended, and no longer has the capacity to handle storm water run-off at its intended rate, the Town, acting by its Highway Superintendent shall have the right, but shall not be obligated, to enter the property and perform emergency repairs in said drainage rights-of-way and/or structures. The costs and expenses for the performance of said repairs shall be borne by the Condominium Trust, and the Trust shall be responsible for the maintenance of said drainage easements as they traverse over the common land.

The Declarant has reserved the right and easement pursuant to paragraphs 5 and 16 hereof to modify the boundaries of Units to be included in the Condominium as part of future phase(s), and such modifications may result in corresponding adjustments in the definition of the Common Areas and Facilities with respect to such Units. In such event, the amendment to this Master Deed adding such future phase(s) to the Condominium shall specify in what respects the Common Areas and Facilities have been adjusted as to the Units involved.

Subject to the exclusive use provisions of paragraph 8 hereof, the restrictions set forth in paragraph 9 hereof, and the reserved rights and easements as set forth in paragraphs 10 and 11 hereof, each Owner may use the Common Areas and Facilities in accordance with their intended purposes without being deemed thereby to be hindering or encroaching upon the lawful rights of the other owners.

#### 7. Percentage Ownership Interest in Common Areas and Facilities

The percentage ownership of each Unit in the Common Areas and Facilities has been determined upon the basis of the approximate relation that the fair value of each Unit measured as of the date of this Master Deed bears to the aggregate fair value of all Units, also measured as of the date of this Master Deed. Each Unit shall be entitled to an appurtenant undivided ownership interest in the Common Areas and Facilities as set forth in Exhibit C attached hereto and made a part hereof, as said Exhibit C may hereafter be amended as additional phase(s) are added to the Condominium pursuant to paragraph 16 hereof.

#### 8. Units

The following portions of the Common Areas and Facilities are hereby designated Units for the exclusive use of one Unit as hereinafter described and are referred to herein and in the Condominium Trust as 'Units'

- (a) Each Unit, shall have the responsibility for the upkeep and maintenance of all entrances, patios, decks, landings, walks, stairs, driveways, parking areas, plantings, shrubs, recreational facilities, conduits, ducts, pipes, flues, wires, meter area and other installations and facilities of every kind and description being situated in, on or upon said Unit, servicing said Unit, and to the extent allowed by law, said elements shall constitute and be (a) a part of the Unit, and (b) property belonging to the Owner of the Unit. Notwithstanding anything set forth elsewhere herein, the Condominium Trust shall be responsible for snow plowing of the streets and ways, but not individual driveways, within the Condominium, and for the mowing of all lawns, including individual Unit Owner's lawns.

#### 9. Purpose and Restrictions on Use

The Condominium shall be used for the following purposes and shall be subject to the following restrictions:

- (a) Each Unit shall be used only for residential purposes and uses normally accessory thereto, (as defined from time to time by the Acton Zoning By-Laws) and for no other use.
- (b) The Open Space shall be used for passive recreational use by the Unit Owners and their families, guests, tenants, occupants and invitees.
- (c) The Owner of any Unit may not, at any time, make any changes or modifications of the exterior of said Unit or any interior changes which affect, or in any way modify, the structural or supportive characteristics or integrity of the buildings or its services; however, such Owner may modify the interior construction of such Unit, provided however, that (i) such addition, modification or other work on any Unit shall comply with the provisions set forth herein and in the Condominium Trust and (ii) any and all work with respect to any modification or other improvements, shall not constitute an adverse impact upon nor an increase in the real or calculated discharge into the Sewer Systems. The Owner proposing to do any such work shall notify the Condominium Trustees, or any successors thereof, in writing, or certified mail, return receipt requested, detailing in narrative form the proposed work to be done, not less than sixty (60) days prior to the commencement thereof.

(d) Any lease or rental agreement for any Unit shall be in writing and specifically subject to the Master Deed, by By-Laws of the Association and the Rules and Regulations of the Condominium, including the restrictions with respect to occupancy, and shall have a minimum initial term of six (6) months. A copy of all leases or rental agreements, as executed shall promptly be furnished to the Trustees who shall keep and maintain the same as part of its records. The Trustees shall also be furnished at the same time with written acknowledgment of the lessee that the lessee has received copies of and will comply with the provisions of such Master Deed, By-Laws and Rules and Regulations. Notwithstanding the foregoing, the Declarant, its successors, assigns or affiliated entities (but not including a purchaser of an individual Unit) shall have the further right to let or lease any Units which have not been sold by it, including any such Unit later acquired or later leased by it upon such terms and for such periods, but not less than thirty (30) days as it, in its sole discretion, shall determine.

(e) Owners may lease, rent or license the use of their Unit, subject, however, to the conditions and obligations set forth in Paragraph 20 of this Master Deed and in this sub-paragraph 9(d) and the Deed Riders attached to the unit deeds for the three affordable Units. Each Owner who leases, rents or licenses the use of his Unit shall be personally responsible and liable for the actions of his lessees, tenants, licensees, and all other occupants therein, and shall, at the request of the Condominium Trustees, cause any lessee, tenant, licensee or other occupant to immediately vacate the Unit should any such person become or cause a nuisance, be disruptive, or otherwise interfere (in the judgment of the Condominium Trustees) with the beneficial use and enjoyment by any Owner(s) of their Unit(s) and/or the Common Areas and Facilities. Therefore, each lease, tenancy or license arrangement entered into by an owner with respect to his Unit shall by virtue of this sub-paragraph 9(c) of the Master Deed be subject to immediate termination in the event the Condominium Trustees shall for the aforesaid reasons request that the lessee, tenant, licensee or any other occupant claiming by through or under said person vacate the Unit. Each Owner who leases, rents or licenses the use of his Unit hereby agrees to indemnify, defend and hold harmless, jointly

and severally, the Condominium Trustees and all other Owners and their respective agents and employees from and against all loss, liability, damage and expense, including court costs and attorneys' fees, on account of

- (i) any damage or injury, actual or claimed, to person or property caused by any of his lessees, tenants, licensees or other occupants of his Unit claiming by, through or under such person; or
  - (ii) any legal action, including court enforcement proceedings, taken by an Owner or the Condominium Trustees against such Owner or his lessees, tenants, licensees or other such occupants to enforce the provisions of sub-paragraph 9(c).
- (f) All rentals, leases, or licenses of Units shall be subject to the provisions of this Master Deed and of the Declaration of Trust of the Condominium Trust and the By-Laws and Rules and Regulations thereto and all tenants, occupants and licensees of Units shall be obligated to observe all of the provisions of this Master Deed, the Declaration of Trust of the Condominium Trust and the By-Laws and Rules and Regulations thereto.
- (g) No noxious or offensive activity shall be carried on upon any Unit or in any Unit.
- (h) No livestock, horses, cows, sheep, goats, pigs, poultry, bees or other barnyard animals of any description shall be kept or maintained in any Unit, but ordinary and usual domestic dogs, cats and birds may be kept in reasonable numbers by any Unit Owner during such time as such Unit is occupied. After due notice and hearing the Trustees may require any Unit Owner to dispose of any pet which has been habitually guilty of violating any applicable law or regulation or damage property of any Unit or occupant.
- (i) No so-called "satellite" dishes or similar apparatus shall be installed on any Unit until the location is approved by the Trustees.
- (j) No signs whatsoever, whether business professional, designed for profit or otherwise shall be maintained or permitted on any Unit.

- (k) Garages may be occupied by private non-commercial passenger vehicles only and may also be used for storage of furniture, ordinary household items, toys, bicycles, boats and canoes and boat and canoe trailers, but only if all of the foregoing items are at all times kept within the confines of the garage in which the same are used (except when actually being transported). Garages shall not be used for human habitation, nor shall Garages be converted into living or other accessory use without the prior written consent of the Trustees. The term "private non-commercial passenger vehicles" as used in this section shall include automobiles, and to the extent customarily used primarily for the transportation of passengers rather than cargo, minivans, sport utility vehicles, and small pickup type trucks. The fact that a vehicle described in the immediately preceding sentence bears "commercial" license plate shall, in and of itself, not render such vehicle a commercial vehicle. Commercial vehicles, recreational vehicles, trailers, and any unregistered vehicles of any kind shall not be stored on any Unit or on the Street adjacent.
- (l) Only accessories normally used for outdoor passive recreation shall be used or stored outside any Unit in the Common Areas, such as lawn furniture, barbecue or similar apparatus as are commonly used or stored on residential properties in the Town of Acton, subject however, at all times, to the rules and regulations adopted by the Trustees.
- (m) Rebuilding, replacements, alterations and improvements to Units and Units shall be subject to the provisions of Section 5.9 of the Condominium Trust. A written instrument duly executed on behalf of the Trustees of the Condominium Trust and recorded with said deeds shall be conclusive evidence of compliance with any covenant or restriction contained herein to the extent stated in said instrument as of the date thereof.
- (n) No statue, monument, ornamental fixture or mailbox shall be erected, placed or maintained on a Unit or on the Common Land.
- (o) No unlawful activity or activity reasonably deemed to be offensive and contrary to the expressed intent of this Master Deed, the Condominium Trust and the duly adopted Rules and Regulations of the Condominium Trust shall be permitted on any Unit or the common areas and facilities of the Condominium. Owners of Units shall

maintain their respective Units in an orderly and clean manner and shall promptly dispose of all refuse, garbage and other waste in a sanitary fashion. No refuse, garbage or other waste, or container therefore, shall be stored outside of a Unit. All use and maintenance of Units and the Common Areas and Facilities shall be conducted in a manner consistent with the comfort and convenience of the occupants of the other Units. No Owner may use or maintain his Unit in any manner or condition which will impair the value or interfere with the beneficial enjoyment of the other Units. In the event that an Owner shall fail, after receipt of thirty (30) days prior written notice, to maintain his Unit in the manner and condition contemplated herein, the Trustees may undertake, at the Owner's expense, to perform such work as they deem necessary to bring the Unit into compliance with the provisions of the this Master Deed and Condominium Trust.

- (p) No lines and poles, outside television antennas and radio aerials shall be located on or the Common Land.
- (q) Three (3) of the Units shall be designated as affordable housing units and shall be included in the Subsidized Housing Inventory as the term is described in 760CMR 31.04(1) in accordance with rules and regulations issued by the Department of Housing and Community Development, as amended from time to time (the "Regulations").

In the event that the Owners shall amend this Master Deed or the Condominium Trust to include therein any right of first refusal in connection with the sale of a unit, such right of first refusal, with respect to the affordable housing units, shall be secondary to the right of first refusal of the Town or the Commonwealth as provided for in the LIP Program. No instrument amending this paragraph shall be of any force and effect until the Zoning Board of Appeals of the Town of Acton and the Massachusetts Department of Housing and Community Development approve such amendment in writing.

- (r) No drainage swales or other drainage appurtenances shall be disrupted, modified or filled without first obtaining in writing approval from the Zoning Board of Appeals of the Town of Acton and all catch basins located within the Common Areas and Facilities of the Condominium shall be inspected and cleaned at least

annually by the Condominium Trust. The Declarant shall be responsible for said maintenance until the Turnover Date.

- (s) The limits of clearing of all of the Condominium Land, including the Units, relative to abutting land not owned by the Declarant shall be as shown on the Site Plan.

Said restrictions shall be for the benefit of each of the Owners and the Condominium Trust, and shall be enforceable by each Owner and also by the Condominium Trustees. Also, insofar as permitted by law, such restrictions shall be perpetual, and, to that end, they may be extended at such time or times and in such manner as permitted or required by law for the continued enforceability thereof. No Owner shall be liable for any breach of the provisions of this paragraph 9, except such as occur during his or her ownership of a Unit.

The use of the Units by all persons authorized to use same shall be at all times subject to the provisions contained in this instrument, by By-laws of the Association and such Rules and Regulations as may be prescribed and established to govern such use or which may hereafter be prescribed and established by the Trustees. Any Unit Owner found by the Massachusetts Superior Court to be in violation of the provisions of this Master Deed, By-Laws and Rules and Regulations of the Association shall be liable for the reasonable counsel fees incurred by the Association in enforcing same.

The Association also reserves the right and easement to enter onto any portion of the premises, including the Units, from time to time, at reasonable hours, for the purpose of reconstructing and repairing adjoining Units, common areas and facilities and to perform any obligations of the Association required or permitted to be performed under this Master Deed and/or the By-Laws of the Association.

Every Unit Deed conveying an interest in a Unit shall contain a Statement that such Unit is subject to the foregoing restrictions on the use of the Units.

#### 10. Rights Reserved to the Declarant for Sales and Future Development

- (a) Notwithstanding any provision of this Master Deed, the Condominium Trust or the By-Laws to the contrary in the event that there are units which the Declarant shall have the same rights as the Owner of such unsold Units, as any other Owner. In addition to the



foregoing, the Declarant reserves the right and easement for so long as it owns such an unsold Unit to:

- (i) Lease, rent and license the use of any unsold Unit;
  - (ii) To use any Unit owned by the Declarant as a model for display for purposes of sale or leasing of Units or Units; and
  - (iii) To use any Unit owned by the Declarant as an office for the Declarant's use.
- (b) Notwithstanding any provision of this Master Deed, the Condominium Trust or the By-laws to the contrary, the Declarant and its authorized agents, representatives and employees shall have the right and easement to erect and maintain on any portion of the Condominium, including in or upon the buildings and other structures and improvements forming part thereof, (excepting a Unit owned by one other than the Declarant), and the Common Areas and Facilities, such sales signs and other advertising and promotional notices, displays and insignia as it shall deem necessary or desirable.
- (c) Notwithstanding any provisions of this Master Deed, the Condominium Trust or the By-Laws to the contrary, the Declarant hereby reserves to itself and its agents, representatives, employees and contractors the right and easement to enter upon all or any portion of the Common Areas and Facilities with workers, vehicles, machinery and equipment for purposes of constructing, erecting, installing, operating, maintaining, repairing, modifying, rebuilding, replacing, relocating and removing structures and their appurtenances, utilities of every character, roads, drives, walks and all such other structures and improvements as the Declarant shall deem necessary or desirable to complete the development of the Condominium, including the development and addition to the Condominium of future phase(s) as permitted by paragraph 16 of this Master Deed and the development of common use facilities should the Declarant elect to develop same pursuant to the rights reserved to the Declarant in paragraph 16 of this Master Deed. This easement shall include the right to store at, in or upon the Common Areas and Facilities temporary structures, vehicles, machinery, equipment, and materials used or to be used in connection with said development work for such periods of time as shall be conveniently required for said

development work. This easement shall not be construed to limit or restrict the scope of any easements granted for the purpose of facilitating development and expansion of the Condominium under the provisions of any other paragraph of this Master Deed or any other instrument or document, or under applicable law or regulation.

11. Rights Reserved to the Condominium Trustees

Upon twenty-four hour advance notice (or such longer notice as the Condominium Trustees shall determine appropriate) to the Owner involved, or immediately and without notice in case of emergency or a condition causing or threatening to cause serious inconvenience to another Unit, the Condominium Trustees shall have the right of access to each Unit:

- (a) To inspect, maintain, repair or replace the Common Areas and Facilities contained therein or elsewhere.
- (b) To exercise any other rights or satisfy any other obligations they may have as Condominium Trustees.

12. The Owners' Organization

The organization through which the owners will manage and regulate the Condominium established hereby is the BLANCHARD PLACE CONDOMINIUM TRUST (hereinabove and hereinafter referred to as the "Condominium Trust") under a Declaration of Trust of even date to be recorded herewith. Each Owner shall have an interest in the Condominium Trust in proportion to the percentage of undivided ownership interest in the Common Areas and Facilities to which his Unit is entitled hereunder. As of the date hereof, the name and address of the original and present Trustees of the

Condominium Trust (hereinafter and hereinafter the "Condominium Trustees") are as follows:

Blanchard Place, LLC  
411 Massachusetts Avenue  
Acton, Massachusetts 01720

The Condominium Trustees have enacted the By-laws pursuant to and in accordance with the provisions of the Act.

13. Units Subject to Master Deed, Unit Deed and Condominium Trust

All present and future owners, lessees, tenants, licensees, visitors, invitees, servants and occupants of Units shall be subject to, and shall comply with, the provisions of this Master Deed (including, without limitation, paragraphs 16 and 19 thereof), the Condominium Trust, the By-Laws, the Unit Deed and the Rules and Regulations of the Condominium adopted pursuant to the By-Laws, as they may be amended from time to time, and the items affecting title to the land described in Exhibit A. The acceptance of a deed or conveyance of a Unit or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Master Deed (including, without limitation, paragraph 16 hereof), the Condominium Trust, the By-Laws, the deed of the Unit and said Rules and Regulations, as they may be amended from time to time, and the said items affecting title to the land, are accepted and ratified by such owner, lessee, tenant, licensee, visitor, invitee, servant or occupant; and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance thereof or lease, tenancy, license, or occupancy agreement or arrangement with respect thereto.

14. Amendments

Except as otherwise provided in paragraph 16 hereof with respect to amendments adding new phase(s) to the Condominium, this Master Deed may be amended by an instrument in writing, signed by the owners at the time holding not less than seventy-five percent (75%) of the total voting power of the Owners, as said voting power is defined in Section 4.3 of the Condominium Trust, or signed by a majority of the Condominium Trustees, in which case such instrument shall be deemed to have been agreed to in writing by owners at the time holding at least seventy-five percent (75%) of said total voting power of the Owners, and duly

recorded with the Middlesex South District Registry of Deeds, provided that:

- (a) The date on which any such instrument is first signed by Owners shall be indicated thereon as the date thereof and no instrument of amendment shall be of any force and effect unless and until the same has been so recorded within six (6) months after such date.
- (b) No instrument of amendment which alters the dimensions of any Unit shall be of any force or effect unless signed by the Owner of the Unit so altered.
- (c) Except as provided in paragraph 16 hereof with respect to amendments adding new phase(s) to the Condominium, no instrument of amendment which would alter the percentage interest to which any Unit is entitled in the Common Areas and Facilities shall be of any force and effect unless the same has been signed by all Owners whose percentage of the undivided interest is affected.
- (d) No instrument of amendment which alters this Master Deed in any manner which would render it contrary to or inconsistent with any requirements or provisions of the Act, the Acton Zoning By-Law, as amended from time to time, and the approvals for the Blanchard Place subdivision and special permit granted pursuant thereto, shall be of any force or effect.
- (e) No instrument of amendment which alters the status of the affordable units as set forth in the approvals for the Blanchard Place Subdivision and Special Permit granted pursuant thereto which alters the status of the affordable units under the LIP program shall be of any force and effect unless approved in writing by the Zoning Board of Appeals of the Town of Acton.
- (f) No instrument of amendment which attempts to alter the requirements set forth in Section 6(f) concerning the road, as shown on the Site Plan, shall be of any force and effect until approved in writing by the Zoning Board of Appeals of the Town of Acton.
- (g) No instrument of amendment which purports to affect the Declarant's reserved easements and rights to construct and add additional phase s to the Condominium as set forth in paragraph 11 of this Master Deed or the Declarant's reserved easement and rights to construct, erect or install common use facilities as

set forth in paragraph 17 hereof shall be of any force and effect unless it is assented to in writing by the Declarant, and this assent is recorded with such amendment at the Middlesex South District Registry of Deeds.

- (h) No instrument of amendment which would adversely affect the Declarant's easements, and rights set forth in this Master Deed, including but not limited to the Declarant's easements, rights and ability to develop and/or market the Condominium, as it may be expanded pursuant to the provisions of paragraph 16 hereof to include additional phase(s), shall be of any force of effect unless it is assented to in writing by the Declarant, and this assent is recorded with such amendment at the Middlesex South District Registry of Deeds. The requirements for the Declarant's assent contained in this subparagraph (f) shall terminate upon a completion of construction and sale by the Declarant to third party purchasers of all of the Declarant's interest in the Condominium and the Land (who shall not be a successor to the Declarant's development interest in the Condominium as referred to in paragraph 18 of this Declaration).
- (i) No instrument of amendment which purposes to amend or otherwise affect paragraphs (c) through (f) of this paragraph 15 or paragraph 16 shall be of any force and effect unless signed by the Declarant, as long as the Declarant owns any interest in the Condominium or the Land.
- (j) Where and to the extent required under the provisions of paragraph 18 hereof, the instrument of amendment shall be assented to by the holders of first mortgages of record with respect to the Units in the manner set forth in paragraph 18.
- (k) Each instrument of amendment executed and recorded in accordance with the requirements of this paragraph 15 shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such amendment is not valid.
- l No amendment of the Master Deed or under the Condominium Trust shall be contrary or inconsistent with any other provision in the Master Deed and Trust

relating to the Sewer System or any provision therein which require the prior written approval of the Division of Water Pollution Control of the DEP or its successors.

15. Termination and Removal from Condominium Law

- (a) Until such time as the Declarant has no remaining beneficial interest thereunder, Owners holding one hundred percent (100%) of the total voting power of the Owners and the Acton Board of Health as provided in subparagraph (b) hereof shall be required to approve the removal of the Condominium described herein from the provisions of the Act and thereafter the provisions of Section 19 of said the Act shall apply; provided, however, if during such time the Declarant holds a portion of the beneficial interest thereunder, the Declarant approves of such removal, the approval of Owners holding at least seventy-five percent (75%) of the total voting power of the Owners hereunder, together with consent in writing of the holders of all liens on the Units and the Acton Board of Health, all as provided for in Section 19 of the Act.
- (b) Upon the removal of the Condominium from the provisions of the Act in accordance with the procedure therefor set forth in Section 19 of the Act, as Section 19 may be modified by subparagraph (a) herein, the Condominium Trust shall terminate, provided that on or before the date for termination:
  - (i) the Acton Board of Health has been notified of the termination and has assented to it by written approval;
  - (ii) written consents to the termination are obtained from the holders of liens upon the Common Land and any of the Units;
  - (iii) to the extent required by the applicable local zoning by-laws, written consents to the termination are obtained by any local governmental entity or its agencies; and
  - (iv) If the above prerequisites for termination of the Trust are satisfied on the date set for said termination, the Trustees shall execute a duly executed by a majority of their number convey the Parcel A. Terminations pursuant to

this Article shall become effective upon the recording with the registry of deeds of the aforementioned instrument signed by the Unit Owners authorizing termination, the consents of the lien holders, the Acton Board of Health, and appropriate Trustee deed(s).

16. Declarant's Reserved Rights to Construct and Add Future Phases and to Amend

The Condominium is planned to be developed as a phased condominium, each phase of which shall include one or more buildings, and Units. In order to permit and facilitate such development, the Declarant, for itself and all its successors and assigns, hereby expressly reserves the following rights and easements, subject to the approval of the Acton Zoning Board of Appeals:

- (a) The Declarant shall have the right and easement to add additional land to the Condominium at any time and from time to time by unilateral amendment to this Master Deed. Such additional land may include, at the Declarant's option, any land, not now shown on the Site Plan or now owned by the Declarant.
- (b) The Declarant shall also have the right and easement to construct, erect and install on the Condominium Land (including such additional land as the Declarant may add to the Condominium, if any) in such locations as the Declarant shall in the exercise of their discretion determine to be appropriate or desirable:
  - (i) Additional building(s), and Units;
  - (ii) Additional roads, driveways, parking spaces and areas, walks and paths;
  - (iii) New or additional fences or decorative barriers or enclosures, and other structures of every character;
  - (iv) New or additional conduits, pipes, satellite dishes, wires, poles and other lines, equipment and installations of every character for the furnishing of utilities; and
  - (v) All and any other buildings, structures, improvements and installations as the Declarant shall determine to be appropriate or desirable

to the development of the Condominium as a phased condominium.

For purposes of such construction, the Declarant shall have all of the rights and easements reserved to it in subparagraph 10(c) hereof.

Ownership of each building, together with the Units and all appurtenances thereto, constructed by or for the Declarant pursuant to the said reserved rights and easements shall remain vested Declarant, who shall have the right to sell and convey the said Units as Units of the Condominium without accounting to any party (other than the Declarant's mortgagees) with respect to the proceeds of such sales.

Except as hereinafter expressly limited as to time and the maximum number of Units which may be added to the Condominium as part of future phases, the Declarant's reserved rights and easements to construct and add to the Condominium additional Units, together with Units, shall be unlimited.

The following sub-paragraphs (a) through (f) are set forth to further describe the scope of the Declarant's reserved rights and easements under this paragraph 16:

- (a) Time Limit After Which the Declarant May No Longer Add Additional Land and/or New Phases. The Declarant's reserved rights to amend this Master Deed to add all or any portion or portions of land to the Condominium and/or to add new Units to the Condominium as part of future phases shall expire twenty-one (21) years after the date of the recording of this Master Deed, provided that said reserved rights shall sooner expire upon the first to occur of the following events:
  - (i) The total Units then included in the Condominium by virtue of this Master Deed and subsequent amendments hereto pursuant to this paragraph 16 reach the maximum limit allowed by law; or
  - (ii) Declarant shall record with the Middlesex South District Registry of Deeds an unambiguous statement specifically limiting or relinquishing its reserved rights to amend this Master Deed to add additional land and/or new Units to the Condominium.



- (b) Location of Future Improvements. There are no limitations imposed on the location of future buildings, structures, improvements and installations to be constructed, erected or installed on the Condominium Land pursuant to the rights reserved to the Declarant under this paragraph 16.
- (c) Size of Phases. There are no minimum or maximum size limitations on the future phase(s) to be added to the Condominium. A phase may consist of any number of buildings, and Units, provided, however, that the maximum total number of permitted Units for the entire Condominium shall not exceed the number permitted by applicable law. The Declarant shall have the right to construct Units and add same to the Condominium in any order, and the Declarant shall not be obligated to construct buildings in numerical order, but may construct buildings in any order which the Declarant may desire. The Declarant shall have the right and easement to add subphases.
- (d) Maximum Number of Units Which May be Added by Future Phases. The Declarant may amend this Master Deed to add new Units to the Condominium as part of future phases, however the total number of Units in the Condominium shall not exceed the maximum number of Units permitted by the Decision.

The Declarant may add future phase(s) and the building(s) and Unit(s) therein to the Condominium by executing and recording with the Middlesex South District Registry of Deeds amendment(s) to this Master Deed which shall contain the following information:

- (i) An amended Exhibit B describing the building(s) being added to the Condominium.
- (ii) If the boundaries of the Unit(s) being added to the Condominium vary from those described in said paragraph 5, the definition of the Common Areas and Facilities contained in paragraph 6 hereof shall be modified, as necessary, to reflect the addition of the Unit(s).
- (iii) An amended Exhibit C describing the designations, locations, approximate areas,

numbers of rooms, immediately accessible Common Areas and Facilities and other descriptive specifications of the Unit(s) being added to the Condominium, as well as describing any variations in the boundaries of such Units from those boundaries set forth in paragraph 5 of this Master Deed, and setting forth the new percentage ownership interests for all Units in the Common Areas and Facilities of the condominium based upon the addition of the new Unit(s). Such percentage ownership shall be calculated in accordance with the Act.

- (iv) A revised site plan of the Condominium showing the new Building(s), and floor plan(s) for the new Units being added to the condominium, which floor plan(s) shall comply with the requirements of the Act.
- (e) It is expressly understood and agreed that no such amendments adding new phases to the Condominium or other amendments made pursuant to this Section 16 shall require the consent, (except as in this paragraph 16 already granted) or signature in any manner by any Owner, any person claiming, by through or under any Owner including the holder of any mortgage or other encumbrance with respect to any Unit) any Trustee of the Condominium Trust, any Mortgagee or any other party whatsoever, and the only signature which shall be required on any such amendment is that of the Declarant. Any such amendment, when so executed by Declarant and recorded with the Middlesex South District Registry of Deeds, shall be conclusive evidence of all facts recited therein and of compliance with all prerequisites to the validity of such amendment in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such amendment is not valid. Each Owner understands and agrees that as additional phase(s) are added to the Condominium by amendment to this Master Deed pursuant to the Declarant's reserved rights hereunder, the percentage ownership interest of his Unit in the Common Areas and Facilities, together with his Unit's concomitant interest in the Condominium Trust and liability for sharing in the common expenses of the Condominium, shall be reduced, and the value of his Unit will represent a comparable proportion

of the estimated aggregate fair value of all Units then in the Condominium. In order to compute each Unit's said percentage ownership interest after the addition of a new phase, the fair value of the Unit measured as of the date of the Master Deed amendment shall be divided by the aggregate fair value of all Units (including the new Units being added to the Condominium), also measured as of the date of the Master Deed amendment. These new percentage interests shall then be set forth in the aforesaid amended Exhibit C which is to accompany each amendment to this Master Deed which adds a new phase to the condominium.

Every Owner by the acceptance of his deed to his Unit hereby consents for himself, his heirs, administrators, executors, successors and assigns and all other persons claiming by, through or under him (including the holder of any mortgage or other encumbrance) or any other party whatsoever, to the Declarant's reserved easements and rights under this paragraph 16 and expressly agrees to the said alteration of this Unit's appurtenant percentage ownership interest in the common Areas and Facilities of the Condominium when new phase(s) are added to the Condominium by amendment to this Master Deed pursuant to this paragraph 16.

In the event that notwithstanding the provisions of this paragraph 16 to the contrary, it shall ever be determined that the signature of any Owner, other than Declarant, is required on any amendment to this Master Deed which adds a Unit(s), additional land and/or new phase(s) to the condominium, then the Declarant shall be empowered, as attorney-in-fact for the owner of each Unit in the Condominium, to execute and deliver any such amendment by and on behalf of and in the name of each such Owner and each Owner; (whether his deed be from the Declarant as grantor or from any other party) and each unit owner hereby constitutes and appoints the Declarant as his attorney-in-fact. This power of attorney is coupled with an interest, and hence shall be irrevocable and shall be binding upon each and every present and future owner of a Unit in the Condominium and all other persons claiming by through or under him including the holder of any mortgage or other encumbrance, or any other party whatsoever.

Notwithstanding anything to the contrary contained in this Master Deed or the Condominium Trust, the Declarant does hereby reserve the right to amend, restate, reaffirm or otherwise take whatever steps which may be required to complete the Condominium and construction of the buildings, improvements and Units and the phasing of any of the same into the Condominium notwithstanding that any of the same may be required to be done beyond any time or period as may be otherwise provided herein so long as any such act or omission shall not be in violation of any rule of law, then in effect.

Notwithstanding anything to the contrary in this Master Deed or the Condominium Trust, the Declarant hereby reserves the right to amend this Master Deed in order to (a) comply with the requirements of the Town of Acton or any agency or department thereof, or (b) comply with the requirements of any governmental agency or body, or (c) comply with the requirements of any insurance underwriter or insurance regulatory body, or (d) comply with the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or any other mortgagee or mortgage investor, or (e) correct typographical, mathematical or scrivener's errors.

All Units shall be substantially completed prior to being added to the Condominium by amendment of this Master Deed. All future phases will be consistent with the initial improvements in terms of quality of construction.

17. Declarant's Reserved Rights to Construct Future Common Use Facilities in the Common Areas and Facilities

The Declarant, for himself and his successors and assigns, hereby expressly reserves the right and easement to construct, erect and install on the Condominium Land in such locations as he shall determine to be appropriate or desirable, one or more common use facilities to serve the Condominium, together with all such utility conduits, pipes, wires, poles and other lines, equipment and installations as shall be associated therewith. Such common use facilities may include a sewage treatment system, parking Units, community buildings, parks, playgrounds or facilities or any other facility for common use by the Owners which the Declarant shall deem necessary or desirable. Upon substantial completion of such common use facility, it shall

become part of the Common Areas and Facilities of the Condominium; and the Declarant shall turn it over to the Condominium Trust for management, operation and maintenance and the Condominium Trustees shall accept responsibility for such management, operation and maintenance. Nothing contained in this paragraph 17, however, shall in any way obligate the Declarant to construct, erect or install any such common use facility as part of the Condominium development.

18. Definition of "Declarant"

- (a) For purposes of this Master Deed, the Condominium Trust and the By-laws, "Declarant" shall have the same meaning as set forth in Section 1A hereof.
- (b) All amendments of this Master Deed executed pursuant to the rights, easements and privileges of the Declarant in connection with phasing, specifically including the Declarant's rights, easements and privileges set forth in paragraph 16 hereof shall be fully valid if executed by the Declarant.

19. Provisions for the Protection of Mortgagees.

Notwithstanding anything in this Master Deed or in the Condominium Trust and ByLaw to the contrary, the following provisions shall govern and be applicable insofar and for as long as the same are required in order to qualify mortgages of Units in the Condominium for sale to the Federal Home Loan Mortgage Corporation (FHLMC) or Federal National Mortgage Association (FNMA), as applicable, under laws and regulations applicable thereto and shall apply for the protection of the holders of the first mortgages (hereinafter "First Mortgages") of record with respect to the Units and shall be enforceable by any First Mortgagee:

- (a) In the event that the Owners shall amend this Master Deed or the Condominium Trust to include therein any right of first refusal in connection with the sale of a Unit, such right of first refusal shall not impair the rights of a First Mortgagee to:
  - (i) Foreclose or take title to a Unit pursuant to the remedies provided in its mortgage; or
  - (ii) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or

- (iii) Sell or lease a Unit acquired by the First Mortgagee through the procedures described in sub-paragraphs (i) and (ii) above.
- (b) Any party who takes title to a Unit through a foreclosure sale duly conducted by a First Mortgagee shall be exempt from any such right of first refusal adopted by the Owners and incorporated in this Master Deed or the Condominium Trust.
- (c) Any First Mortgagee who obtains title to a Unit by foreclosure or pursuant to any other remedies provided in its mortgage or by law shall not be liable for such Unit's unpaid common expenses or dues which accrued prior to the acquisition of title to such Unit by such First Mortgagee, except as many otherwise be set forth in the Act.
- (d) Except as provided by the Act (and Section 5.6 of the Condominium Trust which conforms to said statute) in the case of condemnation or substantial loss to the Units and/or the Common Areas and Facilities of the Condominium, the Owners and the Condominium Trustees shall not be entitled to take the following actions unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each first mortgage owned) have given their prior written consent thereto:
  - (i) By any act or omission, seek to abandon or terminate the Condominium; or
  - (ii) Change the pro-rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance process or condemnation awards; or, determining the pro-rata share of ownership of each Unit in the Common Areas and Facilities; provided that this prohibition shall be deemed waived to the extent necessary to allow the phasing of the condominium pursuant to paragraph 16 hereof; or
  - (iii) Partition or subdivide any Unit; or
  - (iv) By any act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas and Facilities; provided that the phasing of assessments for public utilities, or for other public purposes consistent with the intended use of the Common Areas and Facilities

shall not be deemed an action for which prior consent of the First Mortgagees shall be required pursuant to this clause; and provided further that this prohibition shall be deemed waived to the extent necessary to allow the phasing of the Condominium pursuant to paragraph 16 hereof; or

- (v) Use hazard insurance proceeds on account of losses to either the Units or the Common Areas and Facilities for other than the repair, replacement or reconstruction thereof, except as otherwise provided in Section 5.6 of the Condominium Trust which contains provisions dealing with substantial losses in conformity with the requirements of Section 17 of the Act.
- (e) Consistent with the provisions of the Act, all taxes, assessments and charges which may become liens prior to a first mortgage under the laws of the Commonwealth of Massachusetts shall relate only to the individual Units and not to the Condominium as a whole.
- (f) In no event shall any provision of this Master Deed or the Condominium Trust give an Owner or any other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of such Unit and/or the Common Areas and Facilities.
- (g) Upon written request to the Trustees of the Condominium Trust, identifying the name and address of the holder, insurer or governmental guarantor and the Unit number or address, any First Mortgagee or insurer or governmental guarantor of said first mortgage (hereafter the "Eligible Mortgage Holders" and "Eligible Insurers or Guarantors" as the case may be) will be entitled to timely written notice of:
  - (i) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;
  - (ii) Any delinquency in the payment of easements or charges owned by an Owner of a Unit subject to a first mortgage held, insured or guaranteed by

such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of 60 days;

- (iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Trustees of the Condominium Trust;
  - (iv) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in this paragraph 19.
- (h) To the extent permitted by applicable law, Eligible Mortgage Holders shall also be afforded the following rights:
- (i) Any restoration or repair of the condominium after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Master Deed and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to eligible Mortgage Holder mortgages.
  - (ii) Any election to terminate the legal status of the Condominium after substantial destruction or a substantial taking in condemnation of the condominium property must be approved in writing by Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to Eligible Mortgage Holder mortgages.
  - (iii) When professional management has been previously required by any Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Trust shall require the prior consent of Owners of Units to which at least 67 percent of the votes in the Trust are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least 51



percent of the votes of Units subject to  
Eligible Mortgage Holder mortgages.

- (i) Condominium dues or charges shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Areas and Facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments. In addition, a working capital fund shall be established equal to at least a two (2) months' estimated common area charge for each Unit and shall be maintained in a segregated account. The purpose of the working capital fund is to insure that there will be cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Trustees. Amounts paid into the fund are not to be considered as advance payment of regular assessments.
- (j) No agreement for professional management of the Condominium or any other contract with the Declarant, developer, sponsor or builder, or any lease may exceed a term of three (3) years, and any such agreement shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.
- (k) The Trustees shall make available to the Owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Master Deed, Declaration of Trust, By-Laws, other rules concerning the Condominium and the books, records and financial statements of the condominium Trust. "Available" means available for inspection upon request, during normal business hours or under other reasonable circumstances.
- (l) Any holder of a first mortgage of a Unit shall be entitled upon written request to an audited financial statement for the immediately preceding fiscal year free of charge. Any financial statement so requested shall be furnished within a reasonable time following such request.
- (m) Except for amendments to the Condominium documents of termination of the Condominium made as a result of destruction, damage or condemnation as above set forth, provided that nothing herein shall be deemed to prevent phasing of the Condominium as set forth in paragraph 14 hereof:

- (i) The consent of Owners of Units to which at least 67 percent of the votes in the Condominium Trust are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least 67 percent of the votes of Units subject to Eligible Mortgage Holder mortgages, shall be required to terminate the legal status of the Condominium; and
- (ii) The consent of the owners of Units to which at least 67 percent of the votes in the Condominium Trust are allocated and the approval of Eligible Mortgage Holders holding mortgages on Units which have at least 51 percent of the votes of Units subject to Eligible Mortgage Holder mortgages, shall be required to add or amend any material provisions of the Condominium documents of the condominium, which establish, provide for, govern or regulate any of the following:

Voting;

Assessments, assessment liens or subordination of such liens; reserves for maintenance, repair and replacement of the Common Areas and Facilities (or Units if applicable);

Insurance or Fidelity Bonds;

Rights to use Common Areas and Facilities;

Responsibility for maintenance and repair of the several portions of the Condominium;

Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the project;

Boundaries of any Unit;

The interests in the Common Areas and Facilities; convertibility of Units into Common Areas or of Common Areas into Units;

Leasing of Unit estates;

Imposition of any right of first refusal or similar restriction on the right of an owner to sell, transfer, or otherwise convey his or her Unit;

Any provisions which are for the express benefit of mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of first mortgages on Units.

Any First Mortgagee which does not deliver or post to the Trustees of the Condominium Trust a negative response within thirty (30) days of a written request by the Trustees for approval of any addition or amendment pursuant to this paragraph shall be deemed to have consented to the addition or change set forth in such request. An affidavit by the Trustees making reference to this section, when recorded at the Middlesex South District Registry of Deeds, shall be conclusive evidence as to the existence or non-existence of any fact, or to any conditions or precedent required for any action taken in connection with this paragraph, and may be relied upon by any person without being required to make independent inquiry.

The Declarant intends that the provisions of this paragraph 19 shall comply with the requirements of FNMA and FHLMC with respect to condominium mortgage loans, and all questions with respect thereto shall be resolved consistent with that intention.

The provisions of this paragraph 19 may not be amended or rescinded without the written consent of all First Mortgagees, which consent shall appear on the instrument of amendment as such instrument is duly recorded with the Middlesex South District Registry of Deeds in accordance with the requirements of paragraph 15 hereof.

In the event of any conflict between the provisions of paragraph 16 and the provisions of this paragraph 19, the provisions of paragraph 16 shall prevail.

## 20. Sale or Lease of Units

- (a) Appurtenant Interests. No Owner shall execute any deed, mortgage, or other instrument conveying or mortgaging title to his Unit without including therein the Appurtenant Interests, it being the intention thereof to prevent any severance of such unit's ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall

be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Units to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Appurtenant Interests of all Units.

- (b) Sale and Lease Subject to Condominium Documents. All sales and leases shall explicitly be made subject to the provisions of this Master Deed and the Condominium Trust and By-Laws, in accordance with paragraphs 9 and 16 hereof.

21. Severability.

In the event that any provision of this Master Deed shall be determined to be invalid or unenforceable in any respect, it shall be interpreted and construed so as to be enforceable to the extent and such situations as may be permitted by applicable law, and in any event, the partial or total unenforceability of such provision shall not affect in any manner the validity, enforceability or effect of the remainder of this Master Deed; and, in such event, all of the other provisions of this Master Deed shall continue in full force and effect as if such invalid provision had never been included herein.

22. Waiver

No provision contained in this Master Deed shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

23. Captions

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Master Deed not the intent of any provision hereof.

24. Governing Law

This Master Deed, the Condominium Trust and By-Laws and the condominium created and regulated thereby shall be governed in all respects by the Act as amended from time to time as of the date of the recording of this Master Deed. Provided, however, a subsequent amendment of, revision to or substitution for the Act shall apply

to this Master Deed, the Condominium Trust and By-laws and the Condominium in the following cases:

- (a) Such amendment, revision or substitution is by its terms made mandatory on existing condominiums; or
- (b) To the extent permitted by applicable law, the Owners by a written instrument signed by Owners of Units holding at least two-thirds (2/3) of the total voting power of the Owners, as said voting power is defined in Section 4.3 of the Condominium Trust, may elect to have such amendment, revision or substitution apply. Such instrument setting forth this election, or a notice of it signed by a majority of the Condominium Trustees, which notice shall be accompanied by a certification that the consent of the Owners required for it has been obtained, shall be recorded with the Middlesex South District Registry of Deeds prior to its becoming effective. Such instrument or notice, as so executed and recorded shall be conclusive evidence of the existence of all facts recited therein and of compliance with all prerequisites to the validity thereof in favor of all persons who rely thereon without actual knowledge that such facts are not true or that such instrument or notice is not valid. Notwithstanding the foregoing provisions of this subparagraph 24(b) to the contrary, the owners may not elect to have such amendment, revision or substitution apply, without first obtaining the written consent of the Declarant, which consent shall be recorded with the instrument setting forth the election with the Middlesex South District Registry of Deeds, if any such amendment, revision or substitution would adversely affect the Declarant's right and ability to develop and/or market this Condominium, including all its possible future phase(s).

IN WITNESS WHEREOF, the undersigned has executed this Master Deed as an instrument under seal this \_\_\_\_ day of February, 2006.

Blanchard Place, LLC

By: \_\_\_\_\_

Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

On this \_\_\_\_ day of February, 2006, before me, the undersigned Notary Public, personally appeared Julian J. D'Agostine, III, proved to me through satisfactory evidence of identification, which was personally known to me to have the identity claimed, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Member and Authorized Signatory of Blanchard Place, LLC, a Massachusetts limited liability company)

\_\_\_\_\_  
Notary Public

My Commission Expires:  
[apply seal]

EXHIBIT A  
TO THE MASTER DEED  
OF  
BLANCHARD PLACE CONDOMINIUM

"LAND"

Approximately 2.9 acres, more or less, as shown on a entitled  
"Comprehensive Permit Plan for Blanchard Place, 411 Massachusetts  
Avenue, Acton, Massachusetts, Layout Plan (Sheet 1 of \_).

\_\_\_\_\_ and  
to which plan reference is hereby made for a more particular  
description of said land.

Said land is subject to all easements and other matters disclosed  
by said Plans.

Notwithstanding the foregoing, Declarant specifically reserves to  
itself the right to construct Units and buildings on all portions  
of the land described in this Exhibit A and to add the same to  
the Condominium by Amendment to the Master Deed, all as more  
fully set forth hereinelsewhere in this Master Deed.

Expressly reserving to the Declarant the right to grant easements  
and the right to use for drainage, utility purposes and access,  
on, over, under and through said land.

For title, see deed recorded with the Middlesex South District  
Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_.

EXHIBIT B  
TO THE MASTER DEED  
OF  
BLANCHARD PLACE CONDOMINIUM  
DESCRIPTION OF BUILDINGS

<u>Unit No.</u>	<u>Square Footage</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	

The Unit Designations of each unit and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification, are shown on the Plans hereinafter mentioned and recorded with said Deeds HEREWITH, and which are incorporated herein and made a part hereof.

The buildings are constructed principally of poured concrete foundation, wood frame construction and vinyl siding and asphalt or fiberglass shingled roof, and shall contain two or three stories as shown on the Unit Plans. The Units have a front and rear or side entrance, and may contain landings and/or stairway servicing same, and may contain either a deck or patio and may contain a two car attached garage. The Units have their own separate gas, electric and water meters, gas or oil fired heating and hot water systems and may have an external air conditioning compressor pad optional with central air conditioning system, security system and fireplace.



The Condominium is comprised of Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, as shown on a plan entitled "\_\_\_\_\_" dated \_\_\_\_\_, 2006 by Foresite Engineering Associates, Inc., which plan is recorded with the Middlesex South District Registry of Deeds HERewith (the "Site Plan").

Unit 1 is shown on a floor plan entitled, "\_\_\_\_\_ Blanchard Place Condominium \_\_\_\_\_" dated \_\_\_\_\_, 2006 by Foresite Engineering Associates, Inc., which plan is recorded with the Middlesex South District Registry of Deeds HERewith.

# EXHIBIT C

## TO THE MASTER DEED OF BLANCHARD PLACE CONDOMINIUM

DESCRIPTION OF UNITS				
UNIT NUMBER	LOCATION	APPROXIMATE AREA (SQUARE FEET)	NUMBER AND DESCRIPTION OF ROOMS	PERCENTAGE INTEREST IN COMMON AREAS AND FACILITIES
1	139 Prospect Street			
2	139 Prospect Street			
3	139 Prospect Street			
4	139 Prospect Street			
5	139 Prospect Street			
6	139 Prospect Street			
7	139 Prospect Street			
8	139 Prospect Street			
9	139 Prospect Street			
10	139 Prospect Street			
11	139 Prospect Street			
12	139 Prospect Street			

Full Bath; BA = Basement/Cellar (unfinished); BR = Bedroom; D = Dining Room; FBA = Basement/Cellar Room (finished); Heat Room; HB = Half Bath; K = Kitchen; L = Loft; LA = Laundry; S = Study; SR = Sitting Room; U = Utility Room

Unit has immediate access to common areas through its front, rear, and/or side doors.

When the Master Deed is amended to add one or more Units, the percentage of undivided interest in the Common Areas and facilities of each existing Unit and each Unit added to the Condominium by such amendment shall be calculated (and as to any Unit altered) so that the percentages of undivided interest in the Common Areas and Facilities shall conform with the provisions of the Act.

On the date of recording of the Master Deed, the Declarant in setting the percentages as set forth in this Schedule C, has complied with the provisions of Massachusetts General Laws, Chapter 183A and pursuant to the provisions of the Master Deed, has reserved, but not limited to Paragraph 16 of the same, the Declarant reserves the right to add additional Phases, in an order to be determined, including the right to include Sub-phases within any such Phase, as well as the right to modify the percentage of the interest in the Common Areas and Facilities of Chapter 183A. The Declarant will modify the interest in the Common Areas and Facilities of all subsequent Phases in compliance with the aforesaid provisions of Chapter 183A at the time of recording of such additional Phases or Sub-phases, as the same may be required depending on the type and mix of the Units in any such Phase.

BLANCHARD PLACE CONDOMINIUM

CERTIFICATE OF REVIEW AND APPROVAL

The undersigned has reviewed and approved this Master Deed on behalf of the Zoning Board of Appeals of the Town of Acton.

Anderson and Kreiger, LLP

By: \_\_\_\_\_

Name:

Title:

CONDOMINIUM TRUST

BLANCHARD PLACE CONDOMINIUM TRUST

# BLANCHARD PLACE CONDOMINIUM TRUST

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BLANCHARD PLACE

CONDOMINIUM TRUST

THIS DECLARATION OF TRUST made this \_\_\_\_ day of February, 2006 by Blanchard Place, LLC, of 411 Massachusetts Avenue, Acton, Massachusetts 01720 (hereinafter called the "TRUSTEE" or "TRUSTEES", which term and any pronoun referring thereto shall be deemed to include its successors in trust hereunder and to mean the trustee or the trustees for the time being hereunder, wherever the context so permits).

ARTICLE I - NAME OF TRUST

The trust created hereby shall be known as "BLANCHARD PLACE CONDOMINIUM TRUST".

ARTICLE II - THE TRUST AND ITS PURPOSE

2.1 General Purpose. This Trust is created as the organization of Unit Owners (hereinafter the "Owners" or "Unit Owners") as required by the provisions of Chapter 183A, as amended, of the Massachusetts General Laws (hereinafter the "Act") for the purpose of managing and regulating BLANCHARD PLACE CONDOMINIUM (hereinafter the "Condominium"), established by a Master Deed (hereinafter the "Master Deed") executed by Blanchard Place, LLC (hereinafter the "Declarant" which term shall also include all persons or entities which may succeed to the Declarant's position as developer of the condominium in accordance with the definition of Declarant contained in paragraph 18 of the Master Deed, dated the same date as the date of this Trust and recorded herewith).

2.2 Definitions. Unless the context otherwise requires, the words defined in the Master Deed and the definitions contained in Section 1 of the Act shall be applicable to this Trust. The term "Unit" shall have the same meaning as the term "Unit" as defined by Section 1 of the Act.

2.3 Trust and Not Partnership. It is hereby expressly declared that a trust and not a partnership or corporation is hereby created, and that the owners are beneficiaries and not partners or associates between and among themselves with respect to the trust property, and hold no relation to the Trustees other than as beneficiaries hereunder.



2.4 Property Held in Trust. All property, real and personal, tangible and intangible, conveyed to or held hereunder by the Trustees shall vest in the Trustees, in trust, to manage, administer and dispose of the same and to receive and/or distribute the income and/or principal thereof for the benefit of the Owners from time to time of the Units in the Condominium.

The beneficial interest of each owner is set forth in Exhibit C to the Master Deed and made a part hereof (See Section 4.1 hereof), which interest is equal to the percentage undivided ownership of the Condominium as said percentage individual ownership interest may be amended from time to time.

### ARTICLE III - THE TRUSTEES

#### 3.1 Number of Trustees: Term of Office: Qualifications.

(a) Except as hereinafter provided, after all of the original Trustees named herein namely, Blanchard Place, LLC (the "Initial Board") shall cease to serve, there shall be at all times not less than three (3) nor more than five (5) Trustees, (but in any event an odd number) such number to be determined from time to time by vote of owners holding not less than fifty-one percent of the total voting power of the Owners hereunder, which voting power shall be exercised at any annual or special meeting of the Owners.

(b) Notwithstanding the provisions of subsection (a) of this Section 3.1, for five (5) years from the date of recording of the Master Deed the Initial Board shall continue to serve for this period and until its successors have been elected and qualified. If the Initial Board or either of the members thereof, shall resign, become incapacitated or be unable or unwilling to serve as Trustee during this initial five (5) year period, then a successor Trustee shall be appointed by the then remaining Trustee. If both members of the Initial Board shall resign, become incapacitated or be unable to unwilling to serve as Trustee during this initial five (5) year period, then successor Trustees shall be appointed by Blanchard Place, LLC. Upon the expiration of such five (5) year term, the office of the Initial Board or its successors as set forth in this subsection (b) of this Section 3.1 shall be deemed vacant so as to permit such vacancy to be filled in the manner provided in Section 3.3 below. Until such vacancy has been filled, however, the Initial Board or its successors as set forth in this subsection (b) of this Section 3.1 may continue to act. The term of office of Trustees succeeding the Initial Board shall be a period of two (2) years and shall shall successors have been

elected and qualified. The Trustees need not be Owners.

(c) Notwithstanding anything to the contrary in this Trust contained, the Initial Board shall resign no later than the earliest of the following events:

- (i) 20 days after 12 Units have been conveyed to Unit purchasers; or
- (ii) five (5) years following conveyance of the first Unit.

The purpose of the foregoing provision is to comply with the requirement imposed by the Federal National Mortgage Association ("FNMA"), necessitating the transfer of control of the Condominium to the Owners as above provided. For this purpose "Control" means the right of the Declarant to control the Owners' Association or its Trustees, the Condominium itself or the Owners in any manner except through votes allocated to Units owned by the Declarant on the same basis as votes pertaining to sold Units.

3.2 Election of Trustees. After the expiration of the term of the Initial Board, the Trustee shall be elected by a vote of Owners holding not less than fifty-one percent of the total voting power hereunder, which vote shall be cast at any annual or special meeting of the Owners. Each person elected to serve as Trustee who wishes to so serve shall promptly file with the Secretary of the Trust his written acceptance of election, and upon receipt of such acceptance, the Secretary shall sign and record with the Middlesex South District Registry of Deeds a certificate of election setting forth the names of the new Trustees and reciting that they have been duly elected by the requisite vote of the owners and have filed their written acceptances of election with the Secretary.

3.3 Vacancies. After the expiration of the term of the Initial Board, if and whenever the number of Trustees shall become less than three (3) or less than the number of Trustees last determined by the Owners as provided in Section 3.1 hereof, a vacancy or vacancies in the office of Trustee shall be deemed to exist. Each such vacancy shall be filled by the appointment of a successor who shall be designated by a vote of Owners holding not less than fifty-one percent of the total voting power hereunder, which vote shall be cast at any annual meeting or at any special meeting of the Owners called for the purpose of filling the vacancy. Each Trustee appointed to fill a vacancy shall promptly file with the Secretary of the Trust his written acceptance of appointment. Each such appointment to fill a vacancy shall be evidenced by recording with the Middlesex South District Registry of Deeds of a

certificate of appointment signed by the Secretary setting forth the name of the new Trustee appointed to fill the vacancy and reciting that said Trustee has been duly appointed by vote of the Owners, and that he has filed his written acceptance of appointment with the Secretary. If for any reason any successor shall not be so designated within sixty days after the vacancy in office occurs, an interim Trustee or Trustees to fill such vacancy or vacancies may be appointed by majority vote of all remaining Trustees or, in the alternative, by any court of competent jurisdiction upon the application of any owner or Trustee after notice to all Owners and Trustees and to such others as the court may direct. Any appointment of an interim Trustee by such vote of the remaining Trustees shall become effective upon recording with said Registry of Deeds of a certificate of appointment signed by the Secretary setting forth the name of the interim Trustee appointed to fill the vacancy and reciting that said Trustee has been duly appointed by a vote of the Trustees. Any appointment of an interim Trustee by such court proceeding shall become effective upon recording with said Registry of Deeds of a certified copy of the court decree and of the acceptance of such appointment by the Trustee so appointed.

Any Trustee appointed by the owners to fill a vacancy shall serve for the remainder of the term of the Trustee whose vacancy he filled. Any interim Trustee appointed by the Trustees or by a court after the failure by the owners to fill the vacancy shall serve only until such time as the owners at any annual or special meeting elect a new Trustee (who may be the same person as the interim Trustee) to permanently fill the vacancy involved, provided that if the owners do not so elect a new Trustee to replace the interim Trustee, the interim Trustee shall serve for the remainder of the term of the Trustee whose vacancy he filled.

Notwithstanding the foregoing provisions of this section 3.3, the remaining Trustees shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred upon the Trustees. Any person appointed as a successor Trustee as hereinbefore provided shall be vested with the title to the trust property jointly with the remaining Trustees without the necessity of any act of transfer or conveyance.

3.4 Quorum and Action by Majority. The Trustees may act by a majority vote at any duly called meeting at which a quorum is present. A quorum shall consist of a majority of the Trustees, but in no event less than two Trustees.

3.5 Action by Consent of Trustees. The Trustees may transact without a meeting any business which they are authorized to transact at a meeting provided that the Trustees unanimously assent in writing to the decisions of the Trustees concerning such

business by signing the official record of said decisions to be filed with the records of the Trustees. Any action so taken shall have the same force and effect as though taken at a duly called and held meeting of the Trustees.

3.6 Resignation and Removal of Trustee. Any Trustee may resign by notice in writing given to the Secretary of the Trust, who shall in turn transmit written notice of such resignation to each of the other Trustees. Such written resignation shall be recorded by the Secretary of the Trust at the Middlesex South District Registry of Deeds. After the expiration of the term of the Initial Board, but not prior thereto, after reasonable notice and an opportunity to be heard, a Trustee may be removed from office for good cause relating to his performance (or his non-performance, as the case may be) of his duties as a Trustee by a vote of owners holding at least fifty-one percent of the total voting power hereunder, which vote shall be cast at any annual or special meeting of the owners the notice of which shall specify that the removal shall be voted upon thereat. Any such removal shall be evidenced by the recording at the Middlesex South District Registry of Deeds of a certificate of removal signed by the Secretary of the Trust naming the Trustee so removed and reciting that the requisite votes of the owners were cast for the removal.

In the event that a Trustee who is an Owner ceases to be an Owner and does not, within thirty (30) days of his ceasing to be an Owner, file a written statement with the Secretary of his intent to remain a Trustee, such Trustee shall be conclusively deemed, without further notice, to have resigned and a vacancy shall be deemed to exist. In the event such Trustee shall file a written statement of his intent to remain a Trustee, the remaining Trustees may, by majority vote, allow such Trustee to continue to sit as such Trustee or, by like vote, reject such statement of intent, in which event said Trustee shall be deemed to have resigned and the remaining Trustees shall forthwith call a Special Meeting of the Owners to fill the vacancy thereby created pursuant to Section 3.3; the name of the Trustee deemed to have resigned shall be placed in nomination to fill such vacancy by the Secretary.

3.7 Votes to be Cast for Trustees. As provided in Section 4.3 hereof, each Owner shall have voting power equal to his Unit's percentage of undivided beneficial interest hereunder as set forth in Exhibit C to the Master Deed as the same may be amended. The Declarant shall have voting power as an Owner for all unsold Units. The provisions setting forth the voting power of the Owners, including the Declarant are contained in greater detail in said Section 4.3 hereof.

3.8 No Bond by Trustees. No Trustee elected or appointed as hereinbefore provided, whether as original or successor Trustee, shall be obligated to give any bond or surety or other security for the performance of his duties hereunder; provided, however, that owners holding at least fifty-one percent of the beneficial interest hereunder may at any time, by notice in writing signed by them and delivered to the Trustee or Trustees affected thereby, require that any one or more of the Trustees shall give bond in such amount and with such sureties as shall be specified in such notice; and provided further that any Trustee who is vested with authority or responsibility for handling funds belonging to or administered by the Trust shall be covered by a fidelity bond conforming to the requirements of Section 5.5. 1(d) hereof. All expenses incident to any such bond shall be charged as a common expense of the Condominium.

3.9 Compensation of Trustees. No Trustee shall receive compensation for his services, except that by a vote of a majority of the other Trustees a Trustee may be reimbursed for his out-of-pocket expenditures associated with Trust business.

3.10 No Liability if in Good Faith. No Trustee shall be personally liable or accountable out of his personal assets by reason of any action taken, suffered or omitted in good faith, or for allowing one or more of the other Trustees to have possession of the Trust books or property, or by reason of honest errors of judgment, mistakes of fact or law, the existence of any personal or adverse interest, or by reason of anything except his own willful malfeasance or bad faith.

3.11 Dealing with Trust Not Prohibited. No Trustee or Owner (including but not limited to the Initial Board) shall be disqualified by his office from contracting or dealing directly or indirectly with the Trustees or with one or more Owners, nor shall any such dealing, contract or arrangement entered into in respect of this Trust in which any Trustee or Owner shall be in any way interested be avoided, nor shall any Trustee or owner so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Trustee's holding office or of the fiduciary relation hereby established, or by reason of such Owner's status, provided the Trustee or owner shall act in good faith and shall disclose the nature of his interest before the dealing, contract or arrangement is entered into.

3.12 Indemnity. The Trustees and each of them shall be entitled to indemnity with respect to the Trust property and by the Owners against any liability incurred by them or any of them in good faith

in the execution hereof, including without limiting the generality of the foregoing, liabilities in contract and in tort and liabilities for damages, penalties and fines.

3.13 Certificates under M.G.L.c. 183A, S.6(d). Notwithstanding anything to the contrary in this instrument, certificates under the provisions of Massachusetts General Laws, Chapter 183A, Section 6(d) shall be valid if executed by either member of the Initial Board, and after the expiration of the term of the Initial Board, by any two trustees.

## ARTICLE VI - BENEFICIARIES

### BENEFICIAL INTERESTS AND VOTING POWER

4.1 Percentage Interest. The beneficiaries shall be the Owners of the Condominium from time to time. The beneficial interest in the Trust shall be divided among the owners in the percentage of undivided beneficial interest appertaining to the Units of the Condominium, which shall be identical to the Unit's percentage interest in the Common Areas and Facilities of the Condominium as set forth in Exhibit C to the Master Deed, as said Exhibit C may be hereafter amended as additional phase(s) are added to the Condominium pursuant to the provisions of paragraph 16 of the Master Deed.

4.2 Persons to Vote as Owners. The beneficial interest of each Unit of the condominium shall be held as a Unit and shall not be divided among several Owners of any such Unit. To that end, whenever any of said Units is owned of record by more than one person, the several owners of such Unit shall (a) determine and designate which one of such Owners or other person shall be authorized and entitled to cast votes, execute instruments and otherwise exercise the rights appertaining to such Unit hereunder; and (b) notify the Trustees of such designation by a notice in writing signed by all of the record Owners of such Unit. Any such designation shall take effect upon receipt by the Trustees and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may, by majority vote, designate any one such Owner or other person for such purposes.

4.3 Voting Power of the Owners. Each Owner, including the Declarant, shall have voting power in the affairs of the Condominium equal to the percentage of undivided interest appertaining to his Unit as set forth in Exhibit C to the Master Deed, as said Exhibit C may be hereafter amended as additional

phase(s) are added to the Condominium pursuant to the provisions of paragraph 16 of its Master Deed. In addition, and notwithstanding any other provisions of this Trust and the By-Laws contained herein to the contrary, since the Condominium is a phased condominium, with the Declarant having the reserved right and easement to construct and add additional phases as set forth in paragraph 16 of the Master Deed, the Declarant shall have the right to exercise such voting power as an Owner which shall, in each instance constitute a majority of any vote taken by the Owners. Therefore, the words "total voting power of the Owners" as used in the Master Deed and this Trust shall be equal to the sum of the voting power held by the Owners (including the Declarant) of the Units then included in the Condominium, taking into account the provisions of the prior sentence. The express intent of the voting power as is herein set forth is to allow for the Owners to have a proportionate voice in the management and regulation of the Condominium through this Trust, as the owners, organization, taking into due account the necessity for retention of control by the Declarant during the period of future development of the Condominium as a phased condominium.

#### ARTICLE V - BY-LAWS

The provisions of this ARTICLE V shall constitute the By-Laws (the "By-Laws") of this Trust and the organization of owners established hereby.

5.1 Powers and Duties of the Trustees. The Trustees shall have the powers and duties specifically conferred upon them by the Act, the Master Deed and these By-Laws, and all other powers and duties necessary for the administration of the affairs of the Condominium (except as otherwise provided by law, the Master Deed or these By-Laws), including, without limiting the generality of the foregoing, the following powers and duties:

5.1.1 To appoint and remove at pleasure all officers, agents and employees of the Trust, prescribe their duties, fix their compensation, and require of them such security or fidelity bond(s) as they may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Owner or Trustee in any capacity whatsoever.

5.1.2 To establish, levy and assess, and collect the assessments for Common Expenses including, but not limited to the institution of charges sufficient to generate revenues adequate to fund proper operation, maintenance, repair and replacement of the Sewer System and to fund proper reserves for replacement, emergency repairs and

working capital for the Sewer System.

5.1.3 To do all things necessary to operate, maintain, repair, improve, replace, alter and otherwise administer and care for the Common Areas and Facilities, including, but not limited to, making assessments for the payment of any taxes due thereon.

5.1.4 To obtain all policies of insurance required by these By-Laws and such other insurance as may be required by law or as the Trustees may from time to time determine.

5.1.5 To obtain any legal, architectural, accounting, administrative and other services deemed advisable by the Trustees, including the services of a manager and any other personnel, to whom the Trustees, except to the extent limited by the Act, the Master Deed, or these ByLaws (including this Section 5.1), may delegate certain of its powers and duties. The Trustees shall be entitled to rely upon the advice and counsel of attorneys, architects, accountants and other advisors hired by them and shall be protected in so doing.

5.1.6 To adopt, amend, modify and rescind from time to time and enforce rules and regulations (the "Condominium Rules") governing the use of the Common Areas and Facilities.

5.1.7 To cause to be kept a complete record of all its acts and the affairs of the Trust and to present a statement thereof to the Owners at the annual meeting of the Owners.

5.1.8 To purchase, or otherwise acquire title to or an interest in, sell, lease, mortgage and otherwise maintain, manage, hold, use, encumber and dispose of any property, real or personal, tangible or intangible, in the course of their administration and management of the Condominium, provided that except in the event of condemnation or substantial loss to the Units and/or the Common Areas and Facilities subject to the provisions of Sections 5.6.5 and/or 5.6.1(b) hereof, the Trustees may not by act or by omission seek to abandon, partition, subdivide, encumber, sell or transfer any part or all of the Common Areas and Facilities, other than by the granting of utility rights and easements and/or rights and easements for other public purposes consistent with the intended use of the Common Areas and Facilities, or Units, without the prior authorization of Owners holding at least 75% of the total voting power of the Owners hereunder and of at least two-thirds (based on one Vote for each first mortgage owned) of all first mortgagees of record of Units in the Condominium and to the extent that said action would affect the Sewer System as defined in the Master Deed) the Board of Health of the Town of Acton.



5.1.9 To open and maintain bank accounts, and to authorize the drawing of checks and other financial instruments, and to keep a full and complete record of all financial transactions, which record shall be available for inspection by the Owners and mortgagees of the Units and to prepare periodic financial reports and accountings as may be reasonably required by the Owners.

5.1.10 To borrow or in any other manner raise such sum or sums of money or other property as it shall deem advisable in any manner and on any terms, and to evidence the same by notes, bonds, securities or other evidence of indebtedness, which may mature at a time or times, and subject to any limitations imposed by law, the Master Deed or these By-Laws, to execute and deliver any mortgage, pledge, or other instrument to secure any such borrowing; provided, however, that the Trustees shall have no authority to bind the Owners personally.

5.1.11 To establish committees from among the Owners, define their powers and duties and appoint and remove their members.

5.1.12 To grant easements and rights with respect to utilities to be installed in, upon, under and over the Common Areas and Facilities and to enter into such agreements and undertakings as shall be necessary therefor.

5.1.13 To approve the location and relocation of easements and rights for utilities which have been installed in, upon, under or over the Common Areas and Facilities and to execute, acknowledge and record such instruments and plans identifying such easements as the Trustees deem necessary or desirable.

5.1.14 To receive notice, review and approve (a) certain modifications or additions to the building(s) as referred to in subparagraph 9(b) of the Master Deed (and limited in scope as provided therein); (b) any other construction, modification or decoration activities with respect to a Unit which involve or impact the Common Areas and Facilities, exclusive of Units, and/or over which the Trustees may specifically have review and approval authority under the provisions of the Master Deed and this Condominium Trust.

5.1.15 To enforce obligations of the Owners, allocating income and expenses and doing anything and everything else necessary and proper for the sound management of the Condominium. The Board shall have the power to levy fines against Owners for violations of the provisions of the Master Deed, this Trust, the By-Laws and Rules and Regulations hereto.

The Board shall give notice to any owner of a violation of any rule or regulation prior to fining said Owner. No fine may be levied for more than \$15.00 for each of the first 30 days of one violation, \$25.00 for each of the second 30 days of any one violation, and \$50.00 for each day that said violation continues thereafter. Such fine shall accumulate daily until the violation ceases. Collection of fines may be enforced against the Owner or Owners involved as if the fines were Common Expenses owed by the particular Owner or Owners.

5.1.16 To operate, maintain, repair and replace a Sewer System (as that term is defined in the Master Deed).

5.1.18 To maintain and repair the drainage control structures including the detention and retention areas and wetland replacement areas outside the legal right of way.

5.1.19 To sign, seal, acknowledge, deliver and record in any one or more public offices or places of recording all such instruments and documents as the Trustees shall deem necessary or desirable in the exercise of their powers and the discharge of their duties.

Notwithstanding any provisions of this Trust and By-Laws to the contrary, the Trustees may not delegate to any manager or managing agent for the Condominium any of the following powers and duties:

(a) The power to appoint the officers of the Trust.

(b) The power to establish, levy and assess the assessments or charges for Common Expenses.

(c) The power to adopt, revise, modify and rescind the Condominium rules and regulations.

(d) The powers and duties described in Sections 5.1.8, 5.1.9, 5.1.10, 5.1.11, 5.1.12, 5.1.13, 5.1.14, 5.1.15, 5.1.16, 5.1.17, 5.1.18, 5.1.19, 5.1.20, and 5.1.20 above.

5.1.21 Conducting litigation as to any course of action involving the Common Areas and Facilities or arising out of the enforcement of the By-Laws, rules and regulations, and Master Deed, and this Trust. Notwithstanding any provision of the Master Deed, or the Declaration of Trust of the Condominium Trust, or of these By-Laws or the Rules and Regulations to the contrary, neither the Trustees acting in their capacity as such Trustees or acting as representatives of the Unit Owners, nor any class of Unit Owners shall bring any litigation whatsoever unless a copy of the proposed

complaint in such litigation has been delivered to all of the Unit Owners, and not less than eighty (80%) per cent of all Unit Owners consent in writing to the bringing of such litigation within sixty (60) days after a copy of such complaint has been delivered to the Unit Owners and specifying as a part of the written consent a specific monetary limitation to be paid as legal fees and costs and expenses to be incurred in connection therewith, which amount shall be separately assessed as a special assessment effective forthwith at the time of said affirmative consent. Notwithstanding any provisions of the Master Deed, or of the Declaration of Trust of the Condominium Trust, or these By-Laws or the Rules and Regulations, the provisions of this Section 5.1.21 shall not be amended except by vote of at least eighty (80%) per cent of Unit Owners. The provisions of this Section 5.1.21 shall not apply to litigation by the Condominium Trust against Unit owners with respect to the recovery of overdue Common Expenses or Special Assessments, or to foreclose the lien provided by Section 6 of the Act or to enforce any of the provisions of the Master Deed, or the Declaration of Trust of the Condominium Trust, or these By-Laws or Rules and Regulations thereto, or the unit deed, against Unit Owners.

## 5.2 Maintenance and Repair of Units and Limited Common Facilities.

5.2.1 Each Unit Owner shall be responsible for the proper maintenance and repair of his Unit and the maintenance, repair and replacement of utility fixtures therein serving the same, including without limitation, interior finish walls, ceilings and floors; windows and the interior portions of window frames; interior window trim; plumbing and sanitary waste fixtures and fixtures for water and other utilities; electrical fixtures and outlets; and all wires, pipes, drains, conduits for water, sewerage, electric power and light, telephone and any other utility services which are contained in and serve such Unit solely. Each Unit Owner shall be responsible for all damages to any and all Units caused by this failure to satisfy his maintenance, repair and/or replacement obligations hereunder.

5.2.2 If the Trustees shall, at any time in their reasonable judgment, determine that the interior of a Unit is in such need of maintenance or repair that the market value of one or more other Units is being adversely affected or that the condition of a Unit is in such need of maintenance or repair that the market value of one or more other Units is being adversely affected or that the condition of a Unit or any fixtures, furnishing, facility or equipment therein is such that the market value of one or more other Units is being adversely affected, the trustees shall in writing request the Unit Owner to

perform the needed maintenance, repair or replacement or to correct the hazardous condition, and in case such work shall not have been commenced within fifteen (15) days (or such reasonable shorter period in case of emergency as the Trustees shall determine) of such request and thereafter diligently brought to completion, the Trustees shall be entitled to have the work performed for the account of such Unit Owner whose Unit is in need of work and to enter upon and have access to such Unit for such purposes; and the cost of such work as is reasonably necessary therefore shall constitute a lien upon such Unit and the Unit Owner thereof shall be personally liable therefore. In the event that the Trustees cannot agree as to the need or propriety of enforcing any of the provisions of this paragraph 5.2.2, which cannot be settled between the Trustees, then in that event the matter shall be submitted to arbitration in accordance with the rules of the American Arbitration Association and the award rendered by the arbitrator shall be binding upon the Trustees and the Unit Owners.

5.3 Maintenance, Repair and Replacement of Common Areas and Facilities and Assessments of Common Expenses. The Trustees shall be responsible for the proper maintenance, repair, and replacement of the common areas and facilities of the Condominium (see Section 5.6 for specific provisions dealing with repairs and replacement necessitated because of casualty loss) and any two Trustees or any others who may be so designated by the Trustees, may approve payment of vouchers for such work, and the expenses of such maintenance, repair and replacement shall be assessed to the Unit Owners as common expenses of the Condominium at such times and in such amounts as provided in Section 5.4; provided, however, that if the maintenance, repair or replacement of the common areas and facilities is necessitated by the negligence or misuse of a Unit Owner, either directly or by virtue of his failure to properly maintain, repair or replace his Unit, the expenses of such maintenance, repair and replacement may be assessed to the particular Unit Owner by the Trustees and the Unit Owner shall be personally liable therefore.

5.4 Common Expenses, Profits and Funds. Except as set forth hereinbelow with respect to affordable housing Units referred to in Section 9(w) of the Master Deed, the Owners shall be liable for Common Expenses and shall be entitled to common profits of the Condominium in proportion to their respective percentages of beneficial interest as set forth in Exhibit C to the Master Deed as said Exhibit C may be hereinafter amended as additional phase(s) are added to the Condominium, provided, however, that each owner shall be solely responsible to the respective utility companies for the cost of utility services billed or assessed in connection with the furnishing of utilities to his Unit which are separately

metered. The Trustees may at any time or times distribute common profits among the Owners in such proportions. The Trustees may, to such extent as they deem advisable, set aside common funds of the condominium as reserve or contingent funds, and may use the funds so set aside for reduction of indebtedness or other lawful capital purpose, or, subject to the provisions of Sections 5.6 and 5.7 for repair, rebuilding or restoration of the trust property or for improvements thereto, and the funds so set aside shall not be deemed to be common profits available for distribution.

5.4.1 At least thirty days prior to the commencement of each fiscal year of this Trust (and within thirty days after the recording hereof with respect to the portion of a fiscal year then remaining), the Trustees shall estimate the Common Expenses expected to be incurred during such fiscal year together with a reasonable provision for contingencies and reserves, and after taking into account any undistributed common profits from prior years, shall determine the assessment to be made for such fiscal year. The Trustees shall promptly render statements to the Owners for their respective shares of such assessment, according to their respective percentages of the undivided interest in the Common Areas and Facilities (as set forth in Schedule C to the Master Deed, as the same may be amended), and such statements shall, unless otherwise provided herein, be due and payable within thirty days after the same are rendered. In the event that the Trustees shall determine during any fiscal year that the assessment so made is less than the Common Expenses actually incurred, or in the reasonable opinion of the Trustees likely to be incurred, they shall make a supplemental assessment or assessments and render statements for such assessments in the same manner as is done for annual assessments. The Trustees may in their discretion provide for payments of statements in monthly or other installments. The amount of each such payment, together with interest thereon, if not paid when due, at the rate of eighteen percent (18%) per annum or such lesser rate of interest as shall then be the maximum rate permitted by law, shall constitute a lien on the Owner assessed, pursuant to the provisions of Section 6 of the Act.

5.4.2 Each Owner shall be personally liable for those Common Expenses assessed against his Unit which are due and payable during his period of ownership. No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit which become due and payable subsequent to a sale, transfer or other conveyance by him of such Unit. A purchaser of a Unit shall be personally liable for the payment of Common Expenses assessed and due but unpaid on account of such Unit prior to its acquisition. Except as otherwise provided in the provisions of Section 6 of the Act, a purchaser of a Unit at a foreclosure sale or in any

first mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or by virtue of foreclosing the mortgage or taking a deed (or assignment) in lieu of foreclosure, shall take the property free of any claim for unpaid Common Expense assessments against the Unit which accrue prior to the time such purchaser or mortgagee comes into possession or takes title to the Unit (except for claims for a pro rata reallocation of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the mortgaged Unit).

5.4.3 In the event of default by any Owner in paying to the Trustees his Common Expenses, such Owner shall be obligated to pay all expenses, including attorneys' fees and court costs, incurred by the Trustees in any proceeding brought to collect such unpaid Common Expenses. The Trustees shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including attorneys' fees, in an action brought against such Owner, or by foreclosure of the lien of such Unit as provided in Section 6 of the Act.

5.4.4 After a successful action brought by the Trustees to foreclose a lien on a Unit because of unpaid Common Expenses, an Owner allowed by the Trustees to remain in his Unit for a period of time may, at the option of the Trustees, be required to pay rental for the use of his Unit. A suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

5.4.5 The Trustees shall expend common funds only for Common Expenses and lawful purposes permitted hereby and by the provisions of the Act.

5.4.6 Within ten (10) calendar days after receiving an appropriate written request from an Owner, a purchaser of a Unit under a contract of sale or a Unit mortgagee, addressed to the Trustees and payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), the Trustees shall supply a certificate in recordable form stating the amount of any unpaid assessments (including interest due thereon and costs of collection associated therewith) for common expenses against the Unit. Upon the recording at the Middlesex South District Registry of Deeds of such a certificate signed either by the Secretary of the Trust or by a majority of the Trustees who then appear to be serving according to the records of said Registry of Deeds, the Unit involved shall be discharged from any lien for unpaid Common Expenses which do not appear in said certificate. During the term of the initial lease, such certificate shall be valid if signed by one Trustee.

5.4.7 With respect to Common Expense assessments which are payable in monthly installments, an Owner may, by arrangement with his mortgagee bank, provide for payment by him of installments due on account of such assessments to said mortgagee bank in full satisfaction of his obligation to pay said installments to the Trustees. Provided, however, that as a precondition to such arrangement the mortgagee bank must specifically agree with the Trustees to hold such payments on account of assessments in escrow for the benefit of the Trust and to pay over to the Trustees, upon their or their authorized officer's or agent's written request, all sums so held in escrow.

5.4.8 In the event that the Trustees shall commence an action, whether by way of litigation or arbitration, against any Owner before any administrative agency, Board of Arbitration or Court of competent jurisdiction for the enforcement of any lien, collection of any sums due, whether they be for Common Expenses or otherwise, or to enforce any provision of this Trust, the Master Deed or any rule or regulation of the condominium as any of the foregoing may be from time to time amended, said Owner shall, in addition to any judgment, damages, awards or the like, be liable for and pay all of the Trustees' reasonable costs and expenses, including reasonable attorney's fees relative to said matter and said judgment shall be entered accordingly.

## 5.5 Insurance.

5.5.1 The Trustees shall obtain and maintain, to the extent available, master policies of casualty and physical damage insurance for the benefit and protection of the Trustees and all of the Unit Owners, naming them as the named insureds, and with loss proceeds payable to the Trustees hereunder, or one or more of the Trustees hereunder designated by them, as Insurance Trustees for all of the Unit Owners collectively of the Condominium and their respective mortgagees, as their interests may appear, pursuant to such condominium form of insurance as may from time to time be customarily used in Massachusetts, such insurance to cover the building and all other insurable improvements forming part of the common areas and facilities, including the heating equipment and other service machinery, apparatus, equipment and installations in the common areas and facilities, and including also all such portions and elements of the Units as the Unit Owners are responsible or under Section 5.2.1, but not including (a) the furniture, furnishings or other personal property of the Unit Owners or (b) improvements within a Unit made by the Owners

subsequent to the first sale of such Unit by the Declarants, unless such improvement has been made with the written consent of the Trustees pursuant to which such Unit Owner agrees to pay any additional insurance premiums resulting therefrom. If such agreement is not made, insuring such improvement shall be the separate responsibility of the Unit Owner. Such insurance shall, insofar as practicable, be maintained in an amount equal to at least one hundred (100%) percent of the replacement value of the insured property for insurance purposes as determined by the Trustees (who shall review such value at least as often as annually), and shall insure against (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; and (b) such other hazards or risks as the Trustees from time to time in their discretion shall determine to be appropriate, including, but not limited to, vandalism, malicious mischief, windstorm and water damage, and boiler and machinery explosion or damage. Such insurance may have a deductible amount to be determined from time to time by the Trustees and all such policies shall have an agreed amount endorsement or its equivalent, if applicable, or an inflation guard endorsement.

5.5.2 All policies of casualty or physical damage insurance shall, insofar as practicable, provide (a) that such policies may not be canceled, terminated or substantially modified as to amount of coverage or risks covered without at least thirty (30) days' written notice to the insureds and first mortgagees; (b) for waiver of subrogation as to any claims (except claims involving arson or fraud) against the Trust, the Trustees, the manager, agents, employees, the Unit Owners and their respective employees, agents and guests; (c) for waivers of any defense based upon the conduct of any insured; and (d) in substance and effect that the insurer shall not be entitled to contribution as against any casualty or property insurance which may be purchased separately by Unit Owners.

5.5.3 The Trustee or Trustees hereunder designated as Insurance Trustee or Trustees as aforesaid, shall collect and receive all casualty loss insurance proceeds and shall hold, use, apply and disburse the same in accordance with applicable provisions of Section 5.6 of this ARTICLE V. With respect to losses covered by such insurance which affect portions or elements of a Unit, or of more than one Unit to substantially the same or to different extents, the proceeds relating thereto shall be used, applied and disbursed by the Trustees in a fair and equitable manner.

5.5.4 The Trustees shall also set aside and maintain to the extent available, master policies of insurance with respect to the common areas and facilities, for the benefit of the Trustees and



all of the Unit Owners, for (a) comprehensive public liability, including personal injury coverage which shall cover claims of any Unit Owner in an amount of not less than One Million (\$1,000,000) Dollars per occurrence for personal injury and/or property damage; (b) workmen's compensation and employees' liability with respect to any manager, agent or employee of the Trust, but excluding any independent agent or manager who shall furnish to the Trustees a Certificate of Insurance if such liability is otherwise insured against, it being agreed that the Trustees may waive such requirement in any particular instance, at their discretion; (c) such other risks as the Trustees in their discretion deem it appropriate to insure; and (d) if there is a steam boiler in operation in the premises, boiler explosion insurance evidenced by the standard form of boiler and machinery policy and providing as a minimum One Hundred Thousand (\$100,000) Dollars per accident per location. All such insurance shall be in such amounts and forms as the Trustees shall in their discretion deem appropriate, and shall, insofar as practicable, contain provisions as set forth with respect to non-cancellation, waiver of subrogation, waiver of defense based on conduct of any insured, and non-contribution.

5.5.5 The cost of all such insurance obtained and maintained by the Trustees pursuant to provisions of this Section 5.5 shall be a common expense.

5.5.6 Each Unit Owner may obtain additional insurance for his or her own benefit at his or her own expense. No such policy shall be written so as to decrease the coverage under any of the policies obtained by the Trustees pursuant to Section 5.5.1 above and each Unit Owner hereby assigns to the Trustees the proceeds of any such policy to the extent that any such policy does in fact result in a decrease in such coverage, said proceeds to be applied pursuant to the terms of this Section 5.5.6 as if produced by such coverage. Copies of all such policies (except policies covering only personal property of individual Unit Owners) shall be filed with the Trustees.

5.5.7 Each Unit Owner shall notify the Trustees of all improvements to his or her Unit (except personal property other than fixtures) which exceed a total value of Five Thousand (\$5,000) Dollars within twenty (20) days after the commencement of construction of such improvements and upon receipt of such notice the trustees shall notify the insurer under any policy obtained pursuant to Section 5.5.1 hereof of any such improvements.

5.5.8 Worker's Compensation insurance as required by law.

5.5.9 The Board of Trustees shall retain adequate fidelity bonds

for all officers, employees and agents of the Condominium who handle or are responsible for Condominium funds. The fidelity bond shall cover the maximum amount of funds that will be in the custody of the Trust or its management agent at any time while the bond is in force.

5.5.10 Such other insurance as the Trustees may from time to time determine.

5.5.11 Certificates of insurance with proper mortgagee endorsement, when requested, shall be issued to each Owner and his mortgagee(s).

5.5.12 Notwithstanding anything in this Trust and By-Laws to the contrary, if an Owner by virtue of any activities he conducts in his Unit causes an increase in the premiums for any insurance obtained by the Trustees, he shall pay the amount of all such increases to the Trustees on demand as an additional Common Expense attributable to his Unit.

5.5.13 Each Owner hereby waives, discharges and releases all claims and rights of recovery against the Trustees, the manager (if any), all Owners and other persons entitled to occupy any Unit or other portion of the Condominium and each of their respective agents and employees on account of any loss or damage, whether to person or property, insured against under the policies of insurance obtained by such owner for his own benefit. This waiver shall constitute a waiver of subrogation for purposes of such policies.

#### 5.6 Rebuilding, Restoration and Condemnation.

5.6.1 In the event of any casualty loss to, or condemnation of, the Common Areas and Facilities, the Trustees and Unit Owners shall proceed as set forth in Section 17 of the Act.

5.6.2 The Trustees may perform emergency work essential to the preservation and safety of the Condominium or the safety of persons, or required to avoid the suspension of any essential service to the Condominium, without having first adjusted the loss or obtained the proceeds of insurance.

#### 5.7 Improvements to Common Areas and Facilities.

5.7.1 If and whenever the Trustees shall propose to make any improvement to the Common Areas and Facilities of the Condominium, or shall be requested in writing by twenty-five percent or more of the Owners to make any such improvement, the Trustees shall submit to all Owners (a) a form of agreement (which may be in several

counterparts) specifying the improvement or improvements proposed to be made to make the same; and (b) a copy of the provisions of Section 18 of Chapter 183A. Notwithstanding the foregoing, so long as the Declarant has beneficial interest hereunder, the Trustees shall not submit the aforementioned documents to the Owners unless the request for improvements is also joined in by the Declarant. Upon whichever of the following shall first occur, namely, (a) the receipt by the Trustees of such agreement signed by fifty-one percent of the Owners, or (b) the expiration of six (6) months after such agreement was first submitted to the Owners, the Trustees shall notify all Owners of the aggregate percentage of Owners who have then signed such agreement. If the percentage of agreeing owners equals or exceeds seventy-five percent, then the Trustees shall proceed to make the improvement or improvements specified in such agreement and shall charge the costs thereof as a Common Expense, provided, however, that if such improvement costs are in excess of ten percent of the then value of the Condominium, any Owners not agreeing to the improvement may apply to the Middlesex Superior Court, on such notice to the Trustees as the Court shall direct, for an order directing the purchase of his Unit by the Trustees at the fair market value thereof as approved by the court. The cost of any such purchases shall be a Common Expense. If the percentage of agreeing owners equals or exceeds fifty percent, but is less than seventy five-percent, the Trustees may, with the agreement of those Owners who wish the improvement to be made, proceed to make the improvement and charge the cost thereof as a Common Expense to such agreeing owners only.

5.7.2 If and whenever any Owner shall propose to make an improvement to or affecting the Common Areas and Facilities of the Condominium which is not within the Lot appurtenant to his Unit at such Owner's own expense, and the Trustees determine in their reasonable discretion that such improvement would be consistent and compatible with the provisions and intent of the Master Deed, the Trustees may, but shall not be obligated to, authorize such improvement to be made at the sole expense of the Owner proposing the same, without the consent or approval of other Owners, subject to such contractual undertakings of the owner proposing such improvements as the Trustees in their reasonable discretion deem to be necessary or desirable in the circumstances.

5.8 Determination of Trustees Subject to Arbitration. Notwithstanding anything in Section 5.6 or Section 5.7 contained, (a) in the event that any Owner or Owners shall by notice in writing to the Trustees dissent from any determination of the Trustees with respect to the value of the Condominium or of any Unit or Units or any other determination or action of the Trustees under Section 5.6 or Section 5.7, and such dispute shall not be

resolved within thirty (30) days after such notice, then either the Trustees or the dissenting Owner or Owners may submit the matter to arbitration, and for that purpose, one arbitrator shall be designated by the Trustees, one by the dissenting owner or Owners, and a third by the two arbitrators so designated and such arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association then prevailing; and (b) the Trustees shall not in any event be obligated to proceed with any repair, rebuilding or restoration, or any improvement, unless and until they have received funds in an amount equal to the estimate of the Trustees of all costs associated therewith.

5.9 Rules, Regulations, Restrictions and Requirements. The Trustees shall have the right (which right shall not be delegated) at any time and from time to time to adopt, amend and rescind administrative rules and regulations governing the details of the operation and use of the Common Areas and Facilities. The Trustees shall have the power to enforce the Master Deed, Condominium Trust, these By-laws and the rules and regulations adopted pursuant hereto, and shall have the power to levy fines against the Owners for violations thereof, as set forth in Section 5.1.16 hereof. Fines may be enforced against the Owner or Owners involved as a Common Expense owned by the particular Owner or Owners. In the case of persistent violation of the rules and regulations by a Owner, the Trustees shall have the power to require such Owner to post a bond to secure adherence to the Master Deed, Condominium Trust, By-Laws and rules and regulations and shall have the right to bring an action against such Owner to enjoin him from such course of conduct. The Owner shall be responsible for all reasonable costs and expenses incurred by the parties in connection with any action so taken. Any actions commenced hereunder shall be subject to the provisions of section 5.4.8. A majority vote of owners at a meeting held in compliance with Article IV of this Trust may overrule the Board, provided that any such change in rules or regulations concerning the Sewer System shall require the prior written approval of the Town of Acton Board of Health.

5.10 Manager. The Trustees may hire or appoint a manager or managing agent to perform such duties in the administration, management and operation of the Condominium, including the incurring of expenses, the making of disbursements and keeping of accounts, as the Trustees shall from time to time determine. However, notwithstanding the appointment of such a manager, the Trustees shall retain ultimate control over the administration, management and operation of the Condominium, and they may not delegate to said manager those powers and duties specified in Section 5.1.1 hereof not so delegated. All agreement for professional management of the Condominium shall be terminable

without cause and without incurring payment of a termination fee on ninety (90) days (or less) written notice. The term of such an agreement shall not exceed three (3) years.

#### 5.11 Meetings.

5.11.1 The Trustees shall meet annually on the date of the annual meeting of the Owners and at such meeting shall (by majority vote) elect the Chairman, Treasurer and Secretary. If the number of Trustees shall be less than three, any one Trustee may hold more than one office. Other meetings of the Trustees may be called by the Chairman and shall be called upon the written request of a majority of the Trustees, provided, however, that written notice of each meeting stating the place, day and hour thereof shall be given at least three days before such meeting to each of the Trustees.

5.11.2 There shall be an annual meeting of the owners on the first Tuesday of September of each year, commencing with the year 2005, at 7 p.m. at the Condominium or at such other reasonable place and time as may be designated by the Trustees by written notice given to the Owners at least seven days prior to the date so designated. Special meetings of the Owners may be called at any time by the Trustees, upon the written request of Owners holding at least 33-1/3 percent of the beneficial interest. Written notice of any such special meeting designating the place, day and hour thereof shall be given by the Trustees to the Owners at least fourteen days prior to the date so designated. At the annual meeting of the Owners, the Trustees shall submit reports of the management and finances of the Condominium. Whenever, at any meeting the Trustees propose to submit to the Owners any matter with respect to which approval of or action by the owners is necessary or appropriate, the notice of such meeting shall so state and reasonably specify such matter. The presence in person or by proxy of the holders at least fifty-one (51%) percent of the total voting power of the Owners present in person or represented at any meeting of the Owners, the owners present in person or represented by proxy shall have the power to adjourn the meeting from time to time, without notice, other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which could have been transacted at the meeting as originally noticed. Notwithstanding the foregoing, no such subsequent meeting shall be held more than sixty (60) days following the date of the originally called meeting. Unless a greater vote of the Owners shall be required by the provisions of the Act, the Master Deed or this Trust, a vote of at least fifty-one (51%) percent of the voting power present in person or by proxy at a meeting of the Owners at which a quorum is present shall be

sufficient to transact the business of the Owners, provided always that the Owners may not act to rescind, reverse, modify or amend any decision of or action taken by the Trustees pursuant to their authority under this Trust, nor make the Owners undertake to exercise in any manner the powers or functions of the Trustees hereunder, unless such action by the Owners is authorized by the affirmative vote of at least two-thirds of the total voting power of the owners.

5.12 Notices to Owners. Every notice to any Owner required or permitted under the provisions hereof or which may be ordered in any judicial proceeding shall be deemed sufficient and binding if a written or printed copy of such notice shall be given by one or more of the Trustees to such Owners by leaving such notice at his Units in the Condominium or by mailing it, postage prepaid, and addressed to such owner at such address as may appear upon the records of the Trustees.

5.13 Record Date. The Trustees may, for a period not in excess of thirty (30) days prior to a date of any meeting of the Owners, fix in advance a time as a record date for determining the Owners having a right to notice of and to vote at such meeting, and in such case only owners of record on such record date shall have such rights, notwithstanding any transfer by an owner of his interest in his Units after the record date. If no record date is fixed, the record date for the aforementioned purposes shall be 5:00 p.m. on the next day proceeding the day on which notice of a meeting of the Owners is given.

5.14 Order of Business. The order of business at all meetings of Owners shall be as follows:

- (a) Roll Call.
- (b) Proof of notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Report of officers.
- (e) Report of Trustees.
- (f) Report of committees.
- (g) Election of inspectors of election (when so required).
- (h) Election of Trustees (when required).
- (i) Unfinished business.
- (j) New business.

5.15 Voting at Meetings. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be (a) in writing, signed or on behalf of all the Owners of the Units involved, (b) dated and (c) filed with the Secretary of the Trust. No proxy shall be valid beyond the date of the final adjournment

of the first meeting of owners, whether annual or special, held on or after the date thereof, and every proxy shall automatically terminate upon sale by the Owner of his Unit. A proxy may be revoked by notice given by any Owner of the Unit involved to the person presiding at the meeting at which it is to be cast. Any proxy which purports to be revocable without such notice shall be void.

#### 5.16 Officers.

5.16.1 Term of Office. All officers shall hold office for a term of one year or until their successors are elected and qualified.

5.16.2 Resignation and Removal. Any officer may resign at any time by written notice to the Chairman or the Secretary which notice shall take effect on the date of receipt of such notice or at any later date specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any officer may be removed at any time, with or without cause, by a vote of a majority of the Trustees, provided that if removal for cause shall be proposed, the officer involved shall be granted the opportunity to be heard by the Trustees.

5.16.3 Vacancies. A vacancy in any office may be filled by vote of a majority of the Trustees. The officer selected to fill such a vacancy shall serve for the remainder of the term of the officer he replaces.

5.16.4 Chairman. The Chairman shall preside at all meetings of the Trustees and of the Owners, and shall have such other powers and perform such other duties as are provided in the Master Deed or in this Trust and By-Laws or as may be designated by the Trustees or the Owners from time to time or as are ordinarily exercised by the presiding officer of a corporation.

5.16.5 Secretary. The Secretary shall record the votes and keep the minutes of all meeting of the Trustees and of the Owners in a book or books to be kept for that purpose the names of all Owners, together with their addresses as registered by such Owners and shall have such other powers and duties as may be delegated from time to time.

5.16.6 Treasurer. The Treasurer shall be responsible for the funds of the Trust and shall be responsible for keeping or having kept full and accurate financial records and books of account showing all receipts and disbursements of the Trust and any other financial data required by the Trustees or by the Owners. He shall

be responsible for the deposit of all funds in the name of the Trustees in such depositories as may be designated by the Trustees from time to time and shall have such other powers and duties as may be delegated to him by the Trustees or the Owners from time to time. The Trustees may delegate such of the Treasurer's powers and duties to the manager or managing agent as they deem to be advisable.

5.17 Inspection of Books, Report to Owners. Books, accounts and records of the Trustees shall be open to inspection to any one or more of the Trustees and owners and first mortgage holders of the Units at all reasonable times. The Trustees shall, as soon as reasonably possible after the close of each fiscal year, or more often if convenient to them, submit to the owners a report of the operations of the Trustees for such year which shall include, financial statements in such summary form and in such detail as the Trustees shall deem proper. Any person who has been furnished with such report and shall have failed to object thereto by notice in writing to the Trustees given by certified or registered mail within a period of ninety days after the date of the receipt by him shall be deemed to have assented thereto.

5.18 Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the names of the Trustees or of the Trust may be signed by any two Trustees, or by any person or persons to whom such power may at any time or from time to time be delegated by not less than a majority of the Trustees.

5.19 Seal. The Trustees may adopt a seal circular in form bearing an inscription of the name of this Trust as set forth in ARTICLE I, but such seal may be altered by the Trustees at their pleasure, and the Trustees, may, at any time or from time to time, at their option, adopt a common or wafer seal which shall be valid for all purposes.

5.20 Fiscal Year. The fiscal year of the Trust shall be the year ending with the last day of December or such other date as may from time to time be determined by the Trustees.

5.21 Removal from Condominium Law. Until such time as the Declarant has no beneficial interest hereunder, owners holding one hundred percent (100%) of the total voting power of the Owners and the Town of Acton Board of Health or successor agency responsible for granting Sewer System permits as provided in Paragraph 7.3 herein shall be required to approve the removal of the Condominium described herein from the provisions of the Act and thereafter the provisions of Section 19 of said the Act shall apply; provided,



however, if during such time the Declarant holds a portion of the beneficial interest hereunder, the Declarant approves of such removal, the approval of Owners holding at least seventy-five percent (75%) of the total voting power of the Owners hereunder, together with consent in writing of the holders of all liens on the Units.

5.22 Sale or Lease of Units. Subject to such restriction as may otherwise be set forth in the Master Deed or in the Trust, or in the Decision or the Deed Riders attached to the unit deeds for the affordable Units and Bylaws, an Owner may assign, lease, sell or otherwise transfer all of his interest in his Unit(s), together with (a) the undivided interest in the Common Areas and Facilities appurtenant thereto; (b) the interest of such Owner in any Unit(s) theretofore acquired by the Trustees or their designee, on behalf of all Owners or the proceeds of the sale or lease thereof, if any; and (c) the interest of such Owner in any other assets of the Condominium (hereinbefore and hereinafter collectively called "Appurtenant Interests"). However, no Owner shall execute any deed, lease, mortgage, or other instruments conveying or mortgaging title to or an interest in his Unit(s) without including therein the Appurtenant Interest, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, lease, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Appurtenant Interests of any Unit(s) may be sold, leased, transferred or otherwise disposed of, except as part of a sale, lease, transfer or other disposition of the Unit(s) to which such interests are appurtenant, or as a part of a sale, lease, transfer or other disposition of such part of the Appurtenant Interests of all Unit(s).

5.23 Water Use Charges. Water shall be provided by the municipality to the Condominium through individual Unit meters and shall be paid by the Owners directly to the Municipality and shall not be a Common Expense of the Condominium. In the event that water becomes a Common Expense of the Condominium, then each unit owner shall agree to pay the Condominium an amount proportionate to each unit's usage at periodic intervals as designated by the Condominium.

5.24. Additional Requirements of Board of Health.

(a) The entire Sewer System, including but not limited to those portions thereof which are located within individual Units, shall be subject to all requirements of the Action Board of

Health.

(b) Garbage grinders will not be allowed in any Unit.

(c) Each Unit Owner shall be responsible for the maintenance of all pipes, conduits, controls, ducts, plumbing, cables, equipment and other facilities exclusively serving his/her Unit. It is the responsibility of each Unit Owner to maintain and repair those facilities located in his or her Unit.

(d) All Units shall be made accessible to the maintenance staff of the Condominium Trust at all reasonable times, whether or not the Unit Owners are then present.

(e) The Trustees shall appoint a representative from among the Unit Owners to act as a liaison with the Board of Health and who, with the approval of the Trustees as provided for elsewhere herein, have authority to proceed with any required repairs to the Sewer System.

(f) No construction of any building or structure above or below ground, grazing of livestock, planting of vegetation other than grass or low growing grounds covers, nor disposal of rubbish or other debris shall be permitted over the soil absorption system and its reserve area. Only activities by the Unit Owners, their guests and invitees, such as walking, cross-country skiing and the like shall be permitted in that area where the leach field is located for the Sewer System.

#### ARTICLE VI - RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUSTEES

6.1 Dealing with Trustees. No purchaser, mortgagee, lender or other person dealing with the Trustees as they then appear of record in the Middlesex South District Registry of Deeds need inquire further as to the persons who are then Trustees hereunder.

The receipts of the Trustees or any one or more of them for monies or things paid or delivered to them or him shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom the Trustees or any one or more of them shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, mortgagee, lender or other person dealing with the Trustees or with any real or personal property which then is or hereafter was Trust property shall be bound to ascertain or inquire as to the existence or

occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Trustees or any one or more of them purporting to be done in pursuance of any of the provisions or powers herein contained.

6.2 Recourse Against Trustees. No recourse shall at any time be had under or upon any note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees or by reason of anything done or omitted to be done by or on behalf of them or any of them against the Trustees individually, or against any such agent or employee or against any beneficiary either directly or indirectly, by legal or equitable proceeding, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Trustees, shall look only to the Trust property for payment under such contract or claim or for the payment of any debt, damage, judgment or decree or for any money that may otherwise become due or payable to them from the Trustees so that neither the Trustees nor the beneficiaries, present or future, shall be personally liable therefor; provided, however, that nothing herein contained shall be deemed to limit or impair the liability of Owners under the provisions of the Act.

6.3 Instruments Subject to Trust Terms. Every note, bond, contract, order, instrument, certificate, undertaking, obligations, covenant or agreement, whether oral or written, made, issued or executed by the Trustees or by any agent or employee of the Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express references shall have been made to this instrument.

6.4 Certifications by Trustees for Recording. All persons dealing in any manner whatsoever with the Trustees, the Trust property or any beneficiary hereunder shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Trustee or Trustees, when the same shall be recorded with the Middlesex South District Registry of Deeds. Any certificate executed by the Secretary of this Trust setting forth the names of the Trustees hereunder, when recorded with said Registry of Deeds, shall be conclusive evidence of the identity of those persons who are serving as Trustees in favor of all third persons, including the Trustees, acting in reliance thereon. Any certificate signed by a majority of the Trustees in office at the time, setting forth as facts any matters determining the authority of the Trustees to do any act, when duly acknowledged and recorded in said Registry of Deeds shall be conclusive evidence as to the existence of such

alleged facts in favor of all third persons, including the Trustees, acting in reliance thereon.

## ARTICLE VII - AMENDMENTS AND TERMINATION

7.1 Amendment of Trust. The Trustees, with the consent in writing of owners of Units holding at least seventy-five percent of the total voting power of the Owners, may at any time and from time to time, amend, alter, add to or change this Declaration of Trust in any manner or to any extent, the Trustees, first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided always, however, that no such amendment, alteration, addition or change shall be valid or effective if:

7.1.1 It would alter, or in any manner or to any extent whatsoever, modify or affect the percentage of beneficial interest of any Owner hereunder so as to be different than the percentage of the undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Owner's Units as set forth in the Master Deed, as said Master Deed may be hereafter amended to add new phase(s) to the Condominium pursuant to the provisions of paragraph 16 of the Master Deed; or

7.1.2 It would render this Trust contrary to or inconsistent with the Master Deed or any requirements or provisions of the Act.

7.1.3 It would cause provisions of this Trust to fail to comply with the requirements of the Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC") with respect to condominium mortgage loans.

7.1.4 It would be contrary or inconsistent with any other provision in the Master Deed and Trust relating to the Sewer System or any provision therein which requires the prior written approval of the Town of Acton Board of Health or its successors.

7.1.5 It would be contrary or inconsistent with any state, federal, or municipal law, including, without limitation, the Acton Zoning By-Law and Health Code.

7.2 Necessity for Recording Amendments, Alterations, Additions or Changes. Any amendment, alteration, addition or change pursuant to the foregoing provisions of the ARTICLE VII shall become effective only after recording with the Middlesex Superior District Registry of Deeds as an instrument of amendment, alteration, addition or change, as the case may be, signed, sealed and

acknowledged in the manner required for the acknowledgment of deeds by a majority of the Trustees, setting forth in full the amendment, alteration, addition or change and reciting the consent of the Owners herein required to consent thereto. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with the prerequisites to the validity of such amendment, alteration, addition or change, whether stated in such instrument or not, upon all questions as to title or affecting the rights of third persons and for all other purposes.

7.3 Termination. The Trust hereby created shall terminate only upon the removal of the Condominium from the provisions of the Act in accordance with the procedure therefor set forth in Section 19 of said law, as said Section 19 may be modified by Section 5.23 of this Trust, and further provided that on or before the date set for termination (a) written consents to the termination are obtained from the Board of Health of the Town of Acton, (b) written consents to the termination are obtained from the holders of liens upon the common land and any of the Units, (c) to the extent required by the applicable local zoning by-laws, written consents to the termination are obtained by any local governmental entity or its agencies, and (d) in the event that the Sewer System is still servicing the Units of the Condominium a substitute form of the owner's association in a form satisfactory to the Town of Acton Board of Health is established and existing to assume the maintenance and management of the Common Land upon which the Sewer System and the expansion area is located and all improvements thereto, if then required by law. Termination pursuant to this Article shall become effective upon the recording with the Registry of Deeds of the aforementioned instrument signed by the Unit Owners authorizing termination, the consents of the lien holders, and the Board of Health of the Town of Acton, if required.

7.4 Disposition of Property on Termination. Upon the termination of this Trust, the Trustees may, subject to and in accordance with provisions of the Act, sell and convert into money the whole of the Trust property, or any part or parts thereof, and, after paying or retiring all known liabilities and obligations, shall divide the proceeds thereof among, and distribute in kind (at valuations made by them which shall be conclusive) all other property then held by them in trust hereunder to the owners as tenants in common, according to their respective percentages of beneficial interest hereunder. In making any sale under this provision, the Trustees shall have the power to sell or vary any contract of sale and to do all things, including the execution and delivery of instruments and all other instruments thereof as shown to be in their judgment necessary or desirable in connection

therewith. The powers of sale and all other powers herein given to the Trustees shall continue as to all property at any time remaining in their possession or ownership, even though all times herein fixed for distribution of Trust property may have passed.

7.5. Unilateral Amendment by Declarant. Notwithstanding anything to the contrary in this Declaration of Trust or the Master Deed, the Declarant hereby reserves the right to amend this Declaration in order to (a) comply with the requirements of the Town of Acton or any agency or department thereof, or (b) comply with the requirements of any governmental agency or body, or (c) comply with the requirements of any insurance underwriter or insurance regulatory body, or (d) comply with the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or any other mortgagee or mortgage investor, or (e) correct typographical, mathematical or scrivener's errors.

#### ARTICLE VIII - CONSTRUCTION AND INTERPRETATION; WAIVER AND DEFINITION

8.1 Terms. In the construction hereof, whether or not so expressed, words used in the singular or in the plural respectively include both the plural and singular, words denoting males include female and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), trust and corporations unless a contrary intention is to be inferred from or required by the subject matter or context.

The cover, title, index, headings of different parts hereof and the marginal notes, if any, are inserted only for the convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation or effect hereof. All the trusts, powers and provisions herein contained shall take effect and be construed according to the law of the Commonwealth of Massachusetts.

8.2 Waiver. The Trustees shall have the power and authority to waive any provision of this Trust affecting or limiting the rights of an owner for any cause or reason determined to be reasonable by such Trustees in their discretion; provided, however, that no such waiver on any one occasion shall constitute a waiver on any future occasion, nor shall any waiver of a provision of this Trust affect the Trustees' rights and power to enforce all other provisions of this Trust. No restriction, condition, obligation or provision contained in this Trust or in laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same.

8.3 Conflicts. If any provision of this Trust shall be invalid or shall conflict with the Act, as amended, of the General Laws of Massachusetts or if any provision of this Trust conflicts with any provision of the Master Deed, then the following rules on construction shall be used:

8.3.1 In the event of a conflict between the Trust and the Act, as amended, the provisions of the Act shall control;

8.3.2 In the event of a conflict between any numerical voting requirements for action set forth in the Master Deed and any such requirements set forth herein, the provisions requiring the greater percentage or fraction for action to be taken or avoided shall control;

8.3.3 In the event of any conflict other than as set forth in Paragraph 8.3.2 of this Section between the provisions of the Master Deed and any other provision hereof, the provisions of the Master Deed shall control;

8.3.4 In the event of any conflict between the requirements set forth in the Master Deed or this Trust and the requirements of Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA"), the more stringent of the requirements of FHLMC or FNMA shall control, to the extent that such requirements do not otherwise conflict with applicable law.

8.4 Severability. In the event that any provision of this Trust shall be determined to be invalid or unenforceable in any respect, it shall be interpreted and construed to be enforceable to the extent and in such situations as may be permitted by applicable law, and in any event, the partial or total unenforceability of such provision shall not affect in any manner the validity, enforceability or effect of the remainder of this Trust; and, in such event, all of the other provisions of this Trust shall continue in full force and effect as if such invalid provision had never been included herein.

IN WITNESS WHEREOF, this Trust has been duly executed under seal as of the date first above written.

Blanchard Place, LLC

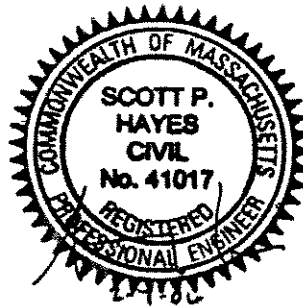
By Julian J. D'Agostine, III,

# EARTH REMOVAL CALCULATIONS

*for*

## BLANCHARD PLACE

139 Prospect Street  
Acton, Massachusetts



Date: February 7, 2006

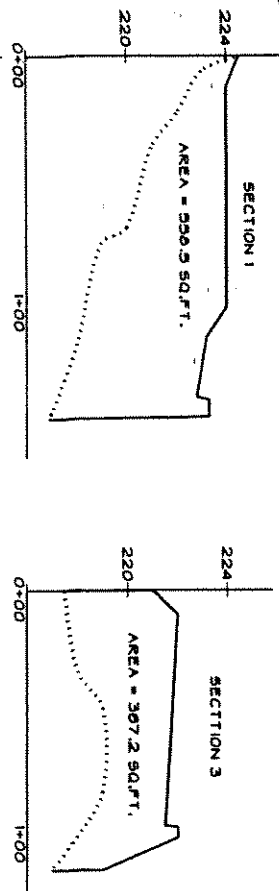
Prepared for:

Blanchard Place, LLC  
411 Massachusetts Avenue, Suite 304  
Acton, Massachusetts 01720

Prepared by:

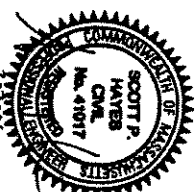
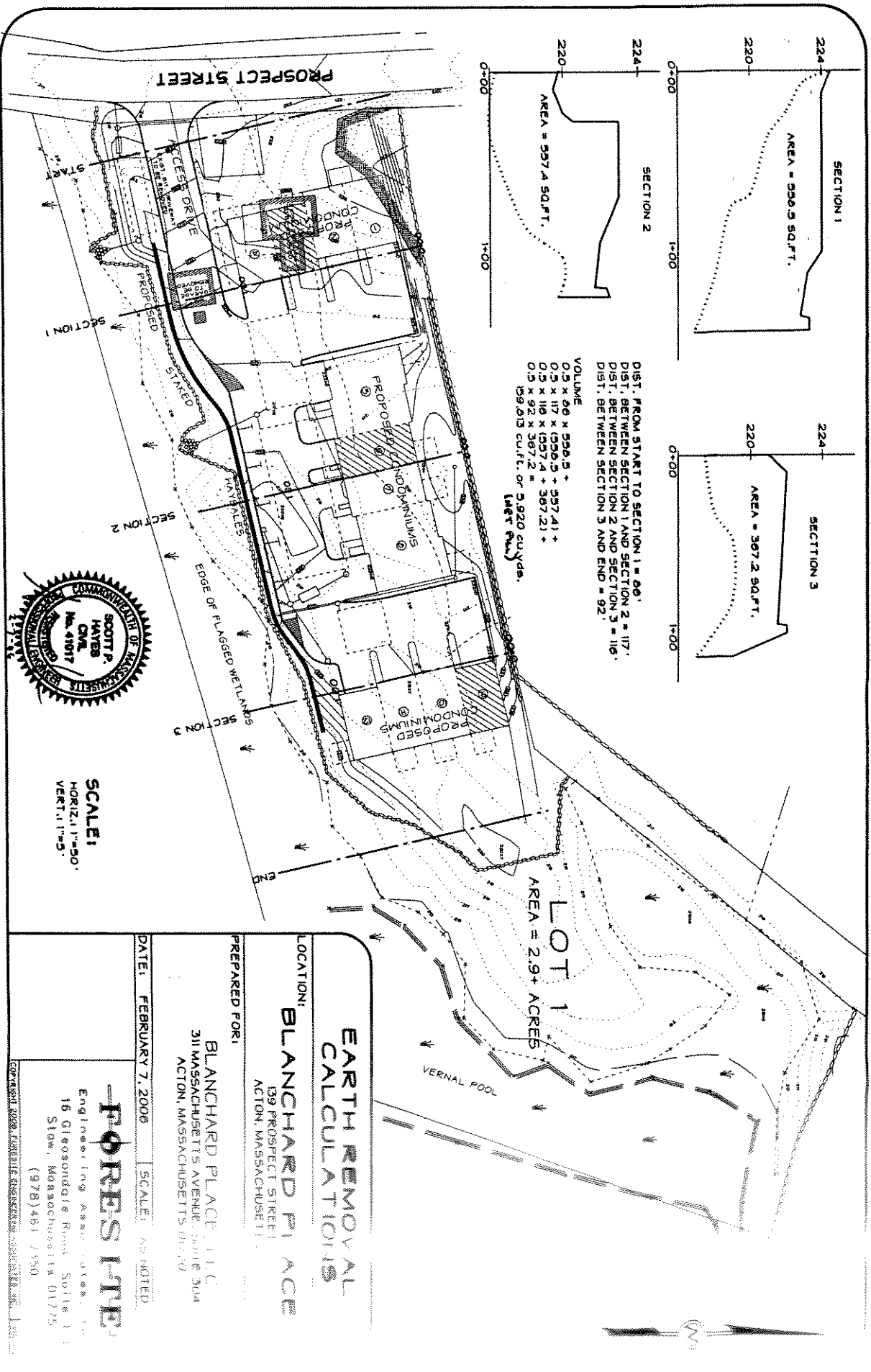
FORESITE Engineering Associates, Inc.  
16 Gleasondale Road, Suite 1-1  
Stow, Massachusetts 01775





DIST. FROM START TO SECTION 1 = 66'  
 DIST. BETWEEN SECTION 1 AND SECTION 2 = 117'  
 DIST. BETWEEN SECTION 2 AND SECTION 3 = 116'  
 DIST. BETWEEN SECTION 3 AND END = 92'

VOLUME  
 $0.5 \times 66 \times 556.5 +$   
 $0.5 \times 117 \times (556.5 + 557.4) +$   
 $0.5 \times 116 \times (557.4 + 367.2) +$   
 $0.5 \times 92 \times 367.2 =$   
 159,013 cu.ft. or 3,920 cu.yds. (144T 64.4)



SCALE:  
 HORIZ. 1"=50'  
 VERT. 1"=5'

# EARTH REMOVAL CALCULATIONS

LOCATION: **BLANCHARD PLACE**  
 139 PROSPECT STREET  
 ACTON, MASSACHUSETTS

PREPARED FOR:  
**BLANCHARD PLACE, LLC**  
 311 MASSACHUSETTS AVENUE, SUITE 304  
 ACTON, MASSACHUSETTS 01701

DATE: FEBRUARY 7, 2006 SCALE: AS NOTED

**FORESLITE**  
 Engineering Associates, Inc.  
 16 Gleasondale Road, Suite 11  
 Stow, Massachusetts 01775  
 (978) 461-2350

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# WATER BUDGET

*A Mass Balance Approach for Calculating Existing and Proposed Groundwater  
Recharge Rates*

At

## BLANCHARD PLACE

139 Prospect Street  
Acton, Massachusetts



Date: February 7, 2006

Prepared for:  
Blanchard Place, LLC  
411 Massachusetts Avenue, Suite 304  
Acton, Massachusetts 01720

Prepared by:  
FORESITE Engineering Associates, Inc.  
10 Gleasondale Road, Suite 101  
Stow, Massachusetts 01775

## PREDEVELOPMENT CONDITIONS

$$P = DRO + ET + I$$

Where

P = Mean Annual Precipitation

*national climactic data center, Bedford, MA*

DRO = Direct Runoff

*drainage calculations by Foresite Engineering*

ET = Evapotranspiration Potential

*United States Geological Survey*

I = Mean Annual Infiltration

$$P = 44.8''/\text{year}$$

$$ET = 20''/\text{year}$$

DRO is the sum of volumes of water not directly infiltrated on site in the drainage calculations. (Sub 1S and Sub 2S) Sub 3S is excluded as it contributes to a depression area within its own watershed, so by definition, runoff generated by this watershed does not qualify as Runoff.

$$DRO = \text{Sub 1S} + \text{Sub 2S} ; .003AF + .034AF = .037AF$$

$$DRO = .037AF$$

To express DRO in terms of in./year, the volume must first be expressed as a percent of Total P for the entire watershed.

$$0.037AF / (79,222\text{s.f.} * 2.6'' * 1\text{ft}/12\text{in.} * 1\text{AC}/43,560\text{s.f.}) = 9.39\%$$

$$DRO = 0.0939 * 44.8'' = 4.21''/\text{year}$$

Solving for I in the Budget Equation yields:

$$P = DRO + ET + I \quad ; \quad I = P - DRO - ET$$

Substituting values yields:

$$I = 44.8'' - 4.21'' - 20'' = \underline{20.59''/\text{year}}$$

## POST DEVELOPMENT CONDITIONS

$$P = DRO + ET + I$$

Where

P = Mean Annual Precipitation      *national climactic data center, Bedford, MA*

DRO = Direct Runoff      *drainage calculations by Foresite Engineering*

ET = Evapotranspiration Potential      *United States Geological Survey*

I = Mean Annual Infiltration

$$P = 44.8''/\text{year} \text{ (Remains constant from previous calucltions)}$$

DRO is the sum of volumes of water not directly infiltrated on site in the drainage calculations. The DRO is taken directly from the drainage calculations as the inflow to the wetlands and Prospect Street.

$$DRO = \text{Reach P inflow} + \text{Reach W inflow} ; 0.002AF + 0.021AF = 0.023AF$$

$$DRO = .023AF$$

To express DRO in terms of in./year, the volume must fist be expressed as a percent of Total P for the entire watershed.

$$0.023AF / (79,222\text{s.f.} * 2.6'' * 1\text{ft}/12\text{in.} * 1\text{AC}/43,560\text{s.f.}) = 5.8\%$$

$$DRO = 0.058 * 44.8'' = 2.59''/\text{year}$$

ET must be reduced due to the decreased area of vegetation on the site, so it shall be reduced by the % reduction of vegetated area.

$$\% \text{ Reduction of ET} = 29130\text{s.f. impervious area} / 79,222 \text{ s.f. total site area}$$

$$\% \text{ Reduction} = 37\%$$

$$ET = .63 * 20'' = 12.6''$$

Solving for I in the Budget Equation yields:

$$P = DRO + ET + I ; I = P - DRO - ET$$

Substituting values yields:

$$I = 44.8'' - 2.59'' - 20'' = \underline{29.61''/\text{year}}$$

$$\text{Annual Recharge Rate (Pre Development)} = 20.59''$$

$$\text{Annual Recharge Rate (Post Development)} = 29.61''$$

## REFERENCES

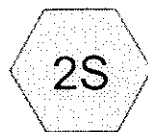
Direct Runoff (DRO) from Drainage Calculations for Proposed Site Improvements at Blandford Place prepared by FORESITE Engineering Associates, Inc. dated February 9, 2006 (excerpts attached herewith).

Mean Annual Precipitation Data (P) from DHCD Community Profile A ction, actual cited data from National Climactic Data Center, Bedford, Massachusetts (excerpt attached herewith).

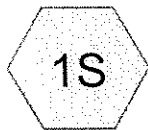
Evapotranspiration Potential (ET) from United States Geological Survey, Mean Annual Runoff, Precipitation, and Evapotranspiration in the Glaciated Northeastern United States, 1951-1980 (attached herewith).



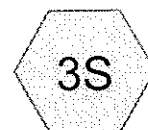
Existing Depression



Draining to Depression



Draining to Prospect  
Street



Draining to Wetlands

Subcat

Reach

Pond

Link

Drainage Diagram for Existing Conditions

Prepared by FORESITE Engineering 2/10/2006

HydroCAD 7.10 s/n 001657 © 2005 HydroCAD Software Solutions LLC

## Existing Conditions

Type III 24-hr 1 Year Storm Rainfall=2.60"

Prepared by FORESITE Engineering

Page 2

HydroCAD® 7.10 s/n 001697 © 2005 HydroCAD Software Solutions LLC

2/10/2006

Time span=5.00-20.00 hrs, dt=0.05 hrs, 301 points

Runoff by SCS TR-20 method, UH=SCS

Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

### Subcatchment 1S: Draining to Prospect Street

Runoff Area=5,140 sf Runoff Depth>0.32"

Flow Length=50' Tc=2.3 min CN=66 Runoff=0.04 cfs 0.003 af

### Subcatchment 2S: Draining to Depression

Runoff Area=22,969 sf Runoff Depth>0.29"

Flow Length=172' Tc=3.6 min CN=65 Runoff=0.13 cfs 0.013 af

### Subcatchment 3S: Draining to Wetlands

Runoff Area=51,113 sf Runoff Depth>0.35"

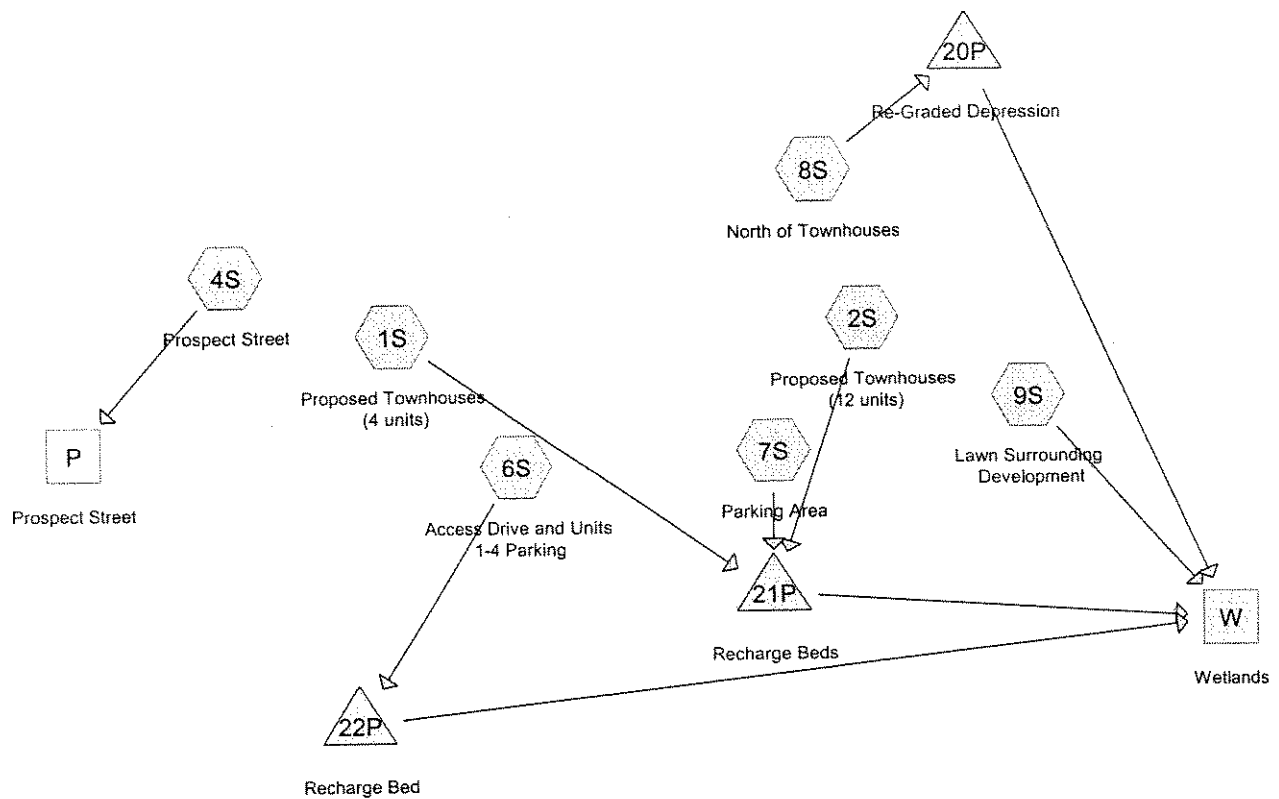
Flow Length=85' Tc=3.8 min CN=67 Runoff=0.39 cfs 0.034 af

### Pond 4P: Existing Depression

Peak Elev=216.02' Storage=65 cf Inflow=0.13 cfs 0.013 af

Outflow=0.07 cfs 0.013 af

**Total Runoff Area = 1.819 ac Runoff Volume = 0.050 af Average Runoff Depth = 0.33"**



Subcat

Reach

Pond

Link

Drainage Diagram for Post Development Conditions

Prepared by FORESITE Engineering 2/10/2006

HydroCAD® 10 s/n 00165 © 2005 HydroCAD Software Solutions



## Post Development Conditions

Type III 24-hr 1 Year Storm Rainfall=2.60"

Prepared by FORESITE Engineering

Page 2

HydroCAD® 7.10 s/n 001697 © 2005 HydroCAD Software Solutions LLC

2/10/2006

Time span=5.00-20.00 hrs, dt=0.05 hrs, 301 points

Runoff by SCS TR-20 method, UH=SCS

Reach routing by Stor-Ind+Trans method - Pond routing by Stor-Ind method

### Subcatchment 1S: Proposed Townhouses (4 units)

Runoff Area=3,344 sf Runoff Depth>2.22"

Flow Length=72' Tc=0.4 min CN=98 Runoff=0.22 cfs 0.014 af

### Subcatchment 2S: Proposed Townhouses (12 units)

Runoff Area=10,032 sf Runoff Depth>2.22"

Flow Length=165' Tc=0.8 min CN=98 Runoff=0.65 cfs 0.043 af

### Subcatchment 4S: Prospect Street

Runoff Area=5,260 sf Runoff Depth>0.19"

Flow Length=184' Tc=1.3 min CN=61 Runoff=0.01 cfs 0.002 af

### Subcatchment 6S: Access Drive and Units 1-4 Parking

Runoff Area=8,738 sf Runoff Depth>2.04"

Flow Length=190' Tc=1.1 min CN=96 Runoff=0.53 cfs 0.034 af

### Subcatchment 7S: Parking Area

Runoff Area=13,411 sf Runoff Depth>2.04"

Flow Length=150' Tc=1.7 min CN=96 Runoff=0.80 cfs 0.052 af

### Subcatchment 8S: North of Townhouses

Runoff Area=5,885 sf Runoff Depth>0.22"

Flow Length=60' Tc=3.3 min CN=62 Runoff=0.02 cfs 0.002 af

### Subcatchment 9S: Lawn Surrounding Development

Runoff Area=32,239 sf Runoff Depth>0.27"

Flow Length=100' Tc=3.9 min CN=64 Runoff=0.15 cfs 0.016 af

### Reach P: Prospect Street

Inflow=0.01 cfs 0.002 af

Outflow=0.01 cfs 0.002 af

### Reach W: Wetlands

Inflow=0.36 cfs 0.021 af

Outflow=0.36 cfs 0.021 af

### Pond 20P: Re-Graded Depression

Peak Elev=216.69' Storage=17 cf Inflow=0.02 cfs 0.002 af

Discarded=0.01 cfs 0.002 af Primary=0.00 cfs 0.000 af Outflow=0.01 cfs 0.002 af

### Pond 21P: Recharge Beds

Peak Elev=216.81' Storage=462 cf Inflow=1.65 cfs 0.109 af

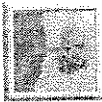
Discarded=0.69 cfs 0.109 af Primary=0.00 cfs 0.000 af Outflow=0.69 cfs 0.109 af

### Pond 22P: Recharge Bed

Peak Elev=216.49' Storage=265 cf Inflow=0.53 cfs 0.034 af

Discarded=0.09 cfs 0.029 af Primary=0.21 cfs 0.005 af Outflow=0.30 cfs 0.034 af

Total Runoff Area = 1.812 ac Runoff Volume = 0.164 af Average Runoff Depth = 1.09"



# GEOGRAPHY

## Location

Eastern Massachusetts, bordered by Carlisle and Concord on the east, Westford and Littleton on the north, Sudbury on the south, Maynard and Stow on the southwest, and Boxborough on the west. Acton is 25 miles northwest of Boston, 14 miles south of Lowell, 29 miles northeast of Worcester, and 203 miles from New York City.

**Total Area:** 20.29 sq. miles

**Land Area:** 19.98 sq. miles

**Population:** 17,872

**Density:** 894 per sq. mile

## Climate

(National Climatic Data Center)

by Allan D. Randall

[illegible]

## REFERENCES

LEARNING OBJECTIVES: To understand the importance of the role of the nurse in the management of the patient with a mental health problem.

CANADA

[illegible]

CANADA

ATLANTIC OCEAN

CANADA

Steve Nouri (D) is a member of the House of Representatives.

## TRAFFIC STUDY

*An analysis of existing and proposed traffic patterns, intersection safety and parking*

*at*

## BLANCHARD PLACE

139 Prospect Street  
Acton, Massachusetts

Date: February 7, 2006

**Prepared for:**

Blanchard Place, LLC  
411 Massachusetts Avenue, Suite 304  
Acton, Massachusetts 01720

**Prepared by:**

MS Transportation Systems, Inc.  
P.O. Box 967  
Framingham, Massachusetts 01701

**MS Transportation Systems, Inc.**  
*Consulting Engineers and Planners*

---

February 7, 2006

Ref: 854

Blanchard Place, LLC  
411 Massachusetts Avenue  
Suite 304  
Acton, MA 01720

Re: Site Access Review, Proposed Blanchard Place, Acton

Dear Sir or Madame:

In response to your request, MS Transportation Systems, Inc. has conducted a review of the proposed site access plan for the above project in Acton. The review included examining the proposed geometric design and sight distances. In addition, an estimate of the potential traffic to be generated by the project was completed and the anticipated operating conditions of the site drive's interface with Prospect Street were determined.

Overall, it was determined that the location and design of the proposed site drive will result in safe traffic movements as the critical visibility criteria will be satisfied and vehicles will be able to enter and exit the drive with minimal delays. The following paragraphs summarize the roadway conditions in the area of the project and the results of the analysis.

The proposed project, which consists of constructing 12 condominiums, will be served by a single access drive that intersects with Prospect Street. Prospect Street in Acton is a two lane local street that primarily serves a residential neighborhood. It is approximately 23 to 24 feet in width with a sidewalk on the west side of the street. It intersects with Route 27 (Main Street) on the south and Massachusetts Avenue (Route 111) on the north. The new drive would intersect with Prospect Street approximately 800 south of Massachusetts Avenue. The general alignment of Prospect Street is straight with a relatively gentle change in vertical grade approximately 300 to 400 feet north of the project site. As part of this analysis, traffic counts were taken. The data indicated that the roadway carries approximately 2,700 vehicles per day with 260 and 230 vehicles measured during the morning and evening peak hours, respectively. At these levels, the roadway can be considered a low volume roadway. The data also indicated that vehicles in the vicinity of the project are traveling at an average speed of 33 miles per hour (mph) with an 85<sup>th</sup> percentile speed of 38 mph.

The proposed site drive will be constructed at a width of 24 feet with berm on each side. It is a relatively short drive serving the three buildings with 4 units per building. A total of 44 parking spaces for the 12 units of housing. This includes at least one garage space per unit as well as 6 visitor spaces. Based on our experience, there should be more than sufficient parking to meet the needs of the development with a parking supply ratio of 3.67. There is also a pedestrian path proposed as part of the project that connects the site to Massachusetts Avenue in close proximity to the school and commercial area.

The number of vehicle trips expected to be generated by the proposed 12 units of condominium residences were estimated utilizing the guidelines published by the Institute of Transportation Engineers (ITE)<sup>1</sup>. Estimates were made for daily and peak hour vehicle trips. Table 1 summarizes the estimates. As indicated in the table, the proposed development is projected to result in 88 vehicle trips over the course of the 24-hour period with 44 entering trips and 44 exiting trips. Peak hour trips are estimated to be fewer than 10 trips during each of the peak hours. Assuming that travel patterns will follow the existing patterns.

---

<sup>1</sup> Institute of Transportation Engineers, Trip Generation, 7<sup>th</sup> Edition, Washington, D.C., 2003

Blanchard Place, LLC  
Re: Proposed Blanchard Place Access Review  
February 7, 2006  
Page 2

the traffic from the development is expected to split with 55% to and from the north in the morning and 67% to and from the south during the afternoon peak hour on Prospect Street. This will further diminish the increase in traffic on the roadway north and south of the project.

**TABLE 1**  
**ESTIMATED TRIP GENERATION**

	In	Out	Total
Weekday Daily	44	44	88
AM Peak Hour	2	5	7
PM Peak Hour	6	3	9

Source: ITE Trip Generation Land Use Code 210, average of rate and regression model.

Based on the observed traffic volume that exists on Prospect Street and the anticipated volume of traffic to be generated by the development, traffic will be able to enter and exit the site efficiently and with minimal vehicle delays. In general, Prospect Street has the ability to accommodate the additional traffic to be generated by the development.

A major part of our review was the evaluation of sight distances relative to the proposed site drive. Adequate sight distance is an important safety consideration and the sight distance requirements are basically divided into two categories: approach (stopping) sight distance and exiting (corner) sight distance.

Stopping sight distance (SSD), which is the more important of the two as related to safety, is the distance required for an approaching driver at a height of 3.5 feet to view and react accordingly to an object 2 feet tall at the driveway. The values are conservatively based on a perception and reaction time of 2.5 seconds and braking distance required under wet, level pavements. Corner sight distance (CSD) is based on the time required to perceive, react, and complete desired exiting maneuver from a driveway once the driver decides to execute the maneuver. Values for exiting sight distance represent the time to turn left or right from the side street, in addition to accelerating to the operating speed of the roadway, without causing approaching vehicles to reduce speed by more than 10 mph. When the roadway is either on an upgrade or downgrade, grade correction factors may be applied. CSD is more related to operating conditions on the major street. As stated in the AASHTO<sup>2</sup> policy guide, as long as the minimum stopping sight distance criteria is satisfied in relation to viewing from the side street, there is sufficient distance for motorists to exit the side street safely and avoid collisions.

Based on the data collected, the average speeds along Prospect Street are estimated to be 33 miles per hour (mph) in the vicinity of the project site while the 85<sup>th</sup> percentile speeds were noted to be approximately 38 mph. Based on the 35 mph speed, stopping sight distance (SSD) criteria would be 250 feet and at 40 miles per hour, the distance is 305 feet. As shown in Table 2, the minimum criteria for both 35 and 40 mph are exceeded.

SOURCE: AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS, AASHTO, A Policy on Geometric Design of Highways and Streets, Washington, D.C., 2004.

Blanchard Place, LLC  
Re: Proposed Blanchard Place Access Review  
February 7, 2006  
Page 3

The minimum criterion for corner sight distance (CSD) is 390 feet for the 30-mph speed and 445 feet for 35 mph. Again, field measurements indicate that CSD criteria will also be satisfied at the proposed driveway. There is a large tree located on the southern corner of the site drive, however, it does not have a major effect on meeting the visibility criteria.

Table 2 presents a summary of the sight distance analysis performed for the two study roadway intersections.

TABLE 2  
SUMMARY OF SIGHT DISTANCE ANALYSIS  
Prospect Street at Proposed Site Drive

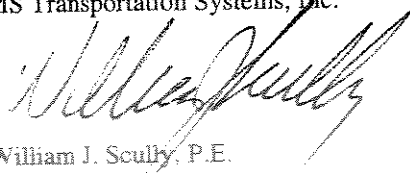
Sight Distance	Measured Distance (ft)	Criteria for Posted 35 mph (ft) <sup>1</sup>	Criteria for Posted 40 mph (ft) <sup>1</sup>
Stopping Sight Distance			
Approaching from North	>350	250	305
Approaching from South	>500	250	305
Corner Sight Distance			
Looking North	440	390	445
Looking South	>500	390	445

<sup>1</sup> Source: American Association of State Highway and Transportation Officials (AASHTO), A Policy on Geometric Design of Highways and Streets, Washington, D.C., 2004

Based on the analysis conducted relative to the proposed site drive and summarized above, it is concluded that the project will have minimal impact on traffic operations along Prospect Street and the additional traffic from the project can be safely accommodated. The design and location of the proposed site drive will also satisfy the critical safety criteria and current practices and should result in site traffic having the ability to enter and exit the site drive in a safe manner.

If you have any questions or need to discuss the above in more detail, do not hesitate to call me at 508-620-2832.

Very truly yours,  
MS Transportation Systems, Inc.



William J. Scully, P.E.  
Managing Engineer

WJS/dmr

**Transportation Data Corporation**  
P.O. Box 334 Wakefield, MA 01880  
Tel. (781) 587-0086 Fax (781) 587-0189  
Cell (781) 316-4663 E: mperone1@comcast.net

Page 1  
03529Aspeed  
Site Code: 854

Prospect Street  
north of Spencer Street  
City/State: Acton, MA  
Client: MSTs/D. Dumais

NB

Start	1	16	21	26	31	36	41	46	51	56	61	66	71	76	
Time	15	20	25	30	35	40	45	50	55	60	65	70	75	999	Total
02/02/0															
6	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
01:00	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
02:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
03:00	0	0	0	0	0	0	1	0	0	0	0	0	0	0	1
04:00	0	0	1	0	1	0	0	0	0	0	0	0	0	0	2
05:00	0	0	0	3	3	2	0	0	0	0	0	0	0	0	8
06:00	0	0	1	13	21	16	1	1	0	0	0	0	0	0	53
07:00	1	0	3	29	46	26	4	1	0	0	0	0	0	0	110
08:00	1	2	3	25	55	29	5	0	0	0	0	0	0	0	120
09:00	0	0	5	14	40	18	5	0	0	0	0	0	0	0	82
10:00	0	1	0	12	31	17	4	0	0	0	0	0	0	0	65
11:00	0	0	2	12	38	17	7	0	0	0	0	0	0	0	76
12 PM	1	0	3	17	36	32	5	1	0	0	0	0	0	0	95
13:00	4	1	7	26	36	15	2	0	0	0	0	0	0	0	91
14:00	2	0	3	15	35	23	4	0	0	0	0	0	0	0	82
15:00	3	0	2	16	42	36	6	0	0	0	0	0	0	0	105
16:00	1	0	4	21	42	31	9	1	0	0	0	0	0	0	109
17:00	1	0	5	23	60	36	9	0	0	0	0	0	0	0	134
18:00	1	0	0	20	60	15	5	0	0	0	0	0	0	0	101
19:00	0	0	3	9	29	15	5	0	0	0	0	0	0	0	61
20:00	1	0	0	9	12	10	4	0	0	0	0	0	0	0	36
21:00	0	0	2	6	7	3	1	0	0	0	0	0	0	0	19
22:00	0	0	0	3	11	4	0	0	0	0	0	0	0	0	18
23:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	16	4	44	273	606	345	78	4	0	0	0	0	0	0	1370

Daily

15th Percentile : 28 MPH  
50th Percentile : 33 MPH  
85th Percentile : 39 MPH  
95th Percentile : 41 MPH

Mean Speed(Average) : 33 MPH  
10 MPH Pace Speed : 31-40 MPH  
Number in Pace : 951  
Percent in Pace : 69.4%  
Number of Vehicles > 30 MPH : 1033  
Percent of Vehicles > 30 MPH : 75.4%



**Transportation Data Corporation**  
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Page 4  
03529Aspeed  
Site Code: 854

Prospect Street  
north of Spencer Street  
City/State: Acton, MA  
Client: MSTs/D. Dumais

SB

Start Time	1 15	16 20	21 25	26 30	31 35	36 40	41 45	46 50	51 55	56 60	61 65	66 70	71 75	76 999	Total
02/02/06	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
01:00	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
02:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
03:00	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
04:00	0	1	0	1	0	0	0	0	0	0	0	0	0	0	2
05:00	0	0	1	0	4	0	0	1	0	0	0	0	0	0	6
06:00	0	1	0	9	16	13	2	0	0	0	0	0	0	0	41
07:00	3	0	8	33	55	32	6	0	0	0	0	0	0	0	137
08:00	2	5	17	15	58	33	9	1	0	0	0	0	0	0	140
09:00	1	0	2	19	40	26	3	0	0	0	0	0	0	0	91
10:00	1	0	0	10	29	11	1	0	0	0	0	0	0	0	52
11:00	5	0	1	5	32	21	4	0	0	0	0	0	0	0	68
12 PM	2	1	4	29	54	22	2	0	0	0	0	0	0	0	114
13:00	3	0	1	17	38	14	3	0	0	0	0	0	0	0	76
14:00	3	0	2	23	41	15	6	0	0	0	0	0	0	0	90
15:00	3	0	3	20	50	21	4	0	0	0	0	0	0	0	101
16:00	1	0	3	21	47	21	1	1	0	0	0	0	0	0	95
17:00	1	0	4	21	51	17	1	0	0	0	0	0	0	0	95
18:00	2	0	3	15	39	16	1	0	0	0	0	0	0	0	76
19:00	1	0	2	18	37	6	3	1	1	0	0	0	0	0	69
20:00	1	0	2	13	20	6	0	0	0	0	0	0	0	0	42
21:00	0	0	0	8	14	4	3	0	0	0	0	0	0	0	29
22:00	0	0	0	4	4	6	0	0	0	0	0	0	0	0	14
23:00	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Total	29	8	53	282	631	284	49	4	1	0	0	0	0	0	1341

Daily

15th Percentile : 27 MPH  
50th Percentile : 33 MPH  
85th Percentile : 38 MPH  
95th Percentile : 40 MPH

Mean Speed(Average) : 32 MPH  
10 MPH Pace Speed : 29-38 MPH  
Number in Pace : 916  
Percent in Pace : 68.3%  
Number of Vehicles > 30 MPH : 969  
Percent of Vehicles > 30 MPH : 72.3%

## TRIP GENERATION WORKSHEET

LAND USE: Residential Condominium  
 LAND USE CODE: 230      Independant Variable---Trips per Dwelling Unit

JOB:  
 JOB NUMBER:            854                      Number of Units:      12

### WEEKDAY

RATES:	Total Trip Ends			Directional Dist.	
	Average	Low	High	Enter	Exit
DAILY	5.86	1.83	11.79	50%	50%
AM PEAK	0.44	0.15	1.61	17%	83%
PM PEAK	0.52	0.18	1.24	67%	33%

	BY AVERAGE		
	Total	Enter	Exit
DAILY	70	35	35
AM PEAK	5	1	4
PM PEAK	6	4	2
REST OF DAY	59	30	29

	BY REGRESSION*		
	Total	Enter	Exit
DAILY	106	53	53
AM PEAK	9	2	7
PM PEAK	11	7	4
REST OF DAY	86	44	42

### SATURDAY

RATES:	Total Trip Ends			Directional Dist.	
	Average	Low	High	Enter	Exit
DAILY	5.67	1.17	11.4	50%	50%
PEAK HR	0.47	0.14	0.93	54%	46%

	BY AVERAGE		
	Total	Enter	Exit
DAILY	68	34	34
PEAK HR	6	3	3

	BY REGRESSION*		
	Total	Enter	Exit
DAILY	471	236	236
PEAK HR	46	31	15

\* Use with caution. Regression not valid for small developments.

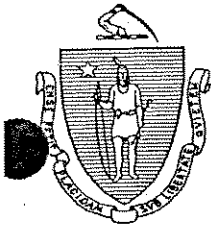
### SUNDAY

RATES:	Total Trip Ends			Directional Dist.	
	Average	Low	High	Enter	Exit
DAILY	4.84	1.36	8.56	50%	50%
PEAK HR	0.45	0.16	1.07	49%	51%

	BY AVERAGE		
	Total	Enter	Exit
DAILY	58	29	29
PEAK HR	5	2	2

	BY REGRESSION*		
	Total	Enter	Exit
DAILY			
PEAK HR			

\* Use with caution. Regression not valid for small developments.



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
Central Regional Office, 627 Main Street, Worcester, MA 01608

MITT ROMNEY  
Governor

KERRY HEALEY  
Lieutenant Governor

STEPHEN R. PRITCHARD  
Secretary

ROBERT W. GOLLEDGE, Jr.  
Commissioner

November 30, 2005

Steve Marsh  
Westchester Company, Inc.  
P.O. Box 672  
Acton, MA 01720

RE: Wetlands/Acton  
DEP File # 85-903  
Superseding Order of Conditions  
139 Prospect Street

Dear Mr. Marsh:

Attached is a Superseding Order of Conditions for the above-referenced project. This Order is being issued in response to Sean Towey's (abutter) appeal Acton Conservation Commission's Order of Conditions for the project. The appeal was filed in accordance with the Massachusetts Wetlands Protection Act, MGL Ch. 131 § 40 and its regulations, 310 CMR 10.00. MaryAnn DiPinto of the Department of Environmental Protection conducted a site meeting on July 29, 2005. Since that site meeting the applicant and abutter have met and signed a side agreement that would allow the project to go forward with some minor changes.

After reviewing all information submitted to date the Department understands the proposed work to be construction of 12 condominium units partly within the 100-foot Buffer Zone to a Bordering Vegetated Wetland. A plan change, moving the construction activity further from the Vernal Pool within the BVW, was submitted to the Acton Conservation Commission and the Department after the Commission issued the Order of Conditions. The Department is issuing this Order to include the plan change as well as the minor changes incorporated into the attached side agreement.

Should you have any questions concerning this matter, please contact MaryAnn DiPinto at (508) 767-2711.

Sincerely,

Philip P. Nadeau  
Wetlands Section Chief

cc: Conservation Commission  
Sean Towey - 143 Prospect St., Acton.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 511-556-1857.

WWW.MASS.GOV • Phone: (508) 781-7651 • Fax: (508) 781-7621 • TDD: (508) 767-2786



Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Wetlands  
**WPA Form 5A – Superseding Order of Conditions**  
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40  
and Wetland Regulations 310 CMR 10.00

DEP File Number:

85-903

**A. General Information**

1. From: Department of Environmental Protection  
Regional Office of the Department of Environmental Protection (the Department)
2. This issuance is for (check one):  
a. ☒ Superseding Order of Conditions  
b. ☐ Amended Superseding Order of Conditions
3. To: Applicant:  
Steve Marsh Westchester Company, Inc.  
a. First Name b. Last Name  
PO Box 672  
c. Mailing Address  
Acton MA 01720  
e. City/Town f. State g. Zip Code
4. Property Owner (if different from applicant):  
Anne Spencer Newey  
a. First Name b. Last Name  
9 Patti Lane  
c. Mailing Address  
Maynard MA 01754  
d. City/Town e. State f. Zip Code
5. Project Location:  
139 Prospect St. Acton  
a. Street Address b. City/Town  
F-2 129  
c. Assessors Map/Plat Number d. Parcel/Lot Number  
Latitude and Longitude, if known (note: electronic filers will click for GIS locator): 042d 28' 21. 3"N 071d 27' 33. 7" W  
e. Latitude f. Longitude
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):  
Middlesex South 42372 244  
a. County b. Book c. Page
7. Dates: 4/8/05 7/29/05 11/30/05  
a. Date Notice of Intent Filed b. Date Site Inspected c. Date of SOC Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):  
Site Plan (sheet 1 of 4)  
a. Plan Title  
Foresite Engineering Scott P. Hayes PE  
b. Prepared By c. Signed and Stamped by  
July 13, 2005 1"=20'  
d. Final Revision Date e. Scale  
Detail sheets, Erosion Control, & Stormwater sheets 2, 3, & 4 of 4 4/7/05  
f. Additional Plan or Document Title g. Date  
Side Agreement signed by abutter, Sean Towey, and applicant, Steve Marsh dated 10/11/05 Attachment 1  
h. Additional Plan or Document Title

## B. Findings

### 1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent, the Order of Conditions, and information submitted with the request for the Superseding Order of Conditions, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- |   |  |   |
|---|--|---|
| a. <input type="checkbox"/> Public Water Supply           | b. <input type="checkbox"/> Land Containing Shellfish          | c. <input checked="" type="checkbox"/> Prevention of Pollution        |
| d. <input type="checkbox"/> Private Water Supply          | e. <input type="checkbox"/> Fisheries                          | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input checked="" type="checkbox"/> Groundwater Supply | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control                  |

### 2. The Department hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures, which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Superseding Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures, which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

### 3. ☒ Buffer Zone Only

Resource Area

4. ☐ Bank

5. ☐ Bordering Vegetated Wetland

6. ☐ Land Under Waterbodies and Waterway

Proposed  
Alteration

a. linear feet

a. square feet

a. square feet

a. cubic dredge

Permitted  
Alteration

b. linear feet

b. square feet

b. square feet

b. cubic dredge

Proposed  
Replacement

c. linear feet

c. square feet

c. square feet

Permitted  
Replacement

d. linear feet

d. square feet

d. square feet

## B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square feet
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	a. square feet		
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total square ft	a. total square ft		
Sq ft within 100 ft	c. square feet	c. square feet		
Sq ft between 100-200 ft	e. square feet	e. square feet		

## C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

- Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
- The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
- This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
- The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
  - the work is a maintenance dredging project as provided for in the Act; or
  - the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
- This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
- If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on \_\_\_\_\_ unless extended in writing by the Department.
- Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
- This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.

9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the DEP Regional Office on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.

10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MA DEP"]

"File Number 85-903"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.

12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.

13. The work shall conform to the plans and special conditions referenced in this order.

14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department of Environmental Protection in writing whether the change is significant enough to require the filing of a new Notice of Intent.

15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.

16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department of Environmental Protection.

18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

19. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Brief Project Description of Permitted Activities:

40 B Condominium construction partly within the Buffer Zone to a Bordering Vegetated Wetland

**Special Conditions** (See the attached sheets for additional conditions numbered 21 through 26)

20. During the construction phase for this project an on-site foreman, directing engineer, or designated construction manager, shall have a copy of this permit at the site, familiarize himself, or herself with the conditions of this permit, and adhere to such conditions.
21. Any changes in the approved plans referenced by this Order shall be submitted to the Department for approval prior to their implementation in the field.
22. The applicant shall hold a pre-construction meeting with the person responsible for work at the project site, the design engineer and the erosion control monitor to review the conditions of this Order to assure understanding and compliance.
23. Any damage caused as a direct result of this project to any wetland resource areas shall be the responsibility of the applicant to repair, restore and/or replace. Sedimentation or erosion into these areas shall be considered damage to wetland resource areas. If sediment reaches these areas the applicant shall contact the Conservation Commission and the Department immediately. A plan for abatement of problem and restoration shall be submitted to and approved by the Department.
24. Dewatering discharges from the work area shall be effectively filtered or settled to remove silt prior to being discharged to waters or wetlands.
25. The Applicant will submit to the Acton Conservation Commission and the MassDEP semi-annual summaries of all site activities no later than May 1 and October 1 of each year while project is ongoing.
26. This Order supersedes all previous Orders of Conditions issued for DEP File #85-903.

**End of Special Conditions**



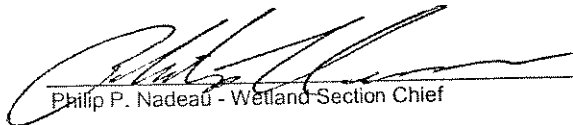
## D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

## E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions #4 or #6..

Issued by the Department of Environmental Protection:

  
Philip P. Nadeau - Wetland Section Chief

Date 11/30/05

### Notary Acknowledgment

Commonwealth of Massachusetts County of

Worcester

On this 30<sup>th</sup> Day of November 2005  
Month Year


before me, the undersigned Notary Public, personally appeared

Philip Nadeau  
Name of Document Signer

Proved to me through satisfactory evidence of identification, which was/were

Personally Known  
Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

  
Signature of Notary Public  
LINDA S. ANDERSON  
Printed Name of Notary Public  
June 5 2009  
My Commission Expires (Date)

## F. Appeals

### For Notices of Intent filed AFTER March 1, 2005:

The applicant or landowner, the conservation commission, any person aggrieved by this Superseding Order or Determination if previously a participant in the permit proceedings, any owner of land abutting the land subject to this Superseding Order or Determination if previously a participant in the permit proceedings, or any ten residents of the city or town where the land is located, if any one resident was previously a participant in the permit proceedings, are hereby notified of their right to file a Notice of Claim for an Adjudicatory Appeal (Notice of Claim) pursuant to M.G.L. c. 30A, sec. 10. Previous participation in the Superseding Order or Determination permit proceedings means the submission of written information to the Conservation Commission prior to the close of the public hearing, filing a Request For A Superseding Order or Determination with the Department, or providing written information to the Department prior to issuance of a Superseding Order or Determination.

Complete adjudicatory appeal applications require the submittal of a Notice of Claim and an Adjudicatory Appeal Fee Transmittal Form. A completed Fee Transmittal Form (available at: <http://www.mass.gov/oaa/feetrans.htm>) including an appeal fee payment of \$100.00, must be mailed to the DEP Lockbox at:

Department of Environmental Protection  
Box 4062  
Boston, MA 02211

The Notice of Claim (including a copy of the \$100.00 appeal fee payment check and a copy of the Fee Transmittal Form) must be sent by certified mail or be hand delivered to the Department within ten business days after the date of issuance of this Superseding Order or Determination. The Notice of Claim must be addressed to:

Case Administrator  
Department of Environmental Protection  
One Winter Street – 2<sup>nd</sup> Floor  
Boston, MA 02108

A copy of the Notice of Claim shall, at the same time, be sent by certified mail or hand delivery to the Conservation Commission, the applicant, and any other parties involved in the proceeding.

The Notice of Claim shall clearly and concisely set forth the facts related to the proceeding, the reasons the Superseding Order or Superseding Determination is considered to be inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, § 40, and the relief sought through the adjudicatory appeal, including the changes desired in the Superseding Order or Superseding Determination. The Notice of Claim must include a copy of the document subject to the appeal and set forth: the Department Wetlands File Number; the name of the applicant and address of the project; the complete name, address, telephone and telefax (if any) numbers of the party filing the request, and, if represented by counsel, the name, address, telephone and telefax (if any) numbers of the attorney; the names, addresses, telephone and telefax (if any) numbers of all other parties, if known; and a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known. In addition, any person filing a Notice of Claim must also set forth sufficient facts to demonstrate their status as a person aggrieved, an abutter, or a ten residents group, and provide documentation to demonstrate previous participation, where required. Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing. Any ten persons may intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, s. 10A.

## G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 7 of this form shall be submitted to the DEP Regional Office listed below.

DEP, Wetlands - 627 Main St. Worcester, MA 01608  
Regional Office of the Department of Environmental Protection

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Department.

To:

Central  
Regional Office of the Department of Environmental Protection

Please be advised that the Order of Conditions for the Project at:

139 Prospect Street Acton, MA  
Project Location

85-903  
DEP File Number

Has been recorded at the Registry of Deeds of:

County Book Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant

10/8/05

## Side Agreement:

1. It is agreed that Westchester Corporation will pay for and install the following items as shown on attached Landscape Plan and Plant List for Towey property drawn by Kristen Kazokas dated 09/07/05.
  - a. Wood Fence 7ft high
  - b. 4ft. Wood Gate
  - c. Plantings ( one of Plant marked A, three of Plant marked B, two of Plant marked C, one of Plant marked E).
2. It is agreed that Westchester Corporation will plant the following items as shown on attached Landscape Plan and Plant List for Westchester property drawn by Kristen Kazokas dated 09/07/05.
  - a. Plantings ( three of Plant marked A, nine of Plant marked B )
3. It is agreed that Westchester Corporation will not remove the tree identified red-lined on engineering plan by Foresite Engineering revision dated 07/13/05 as T1 and that a tree well will be installed to protect the root system.
4. It is agreed that trimming and pruning of all trees along the stone wall will be done by a certified arborist.
5. It is agreed that a certified arborist will determine which trees along the stone wall should be removed for safety/construction reasons.
6. It is agreed that a grate for the culvert located at the vernal pool will be added by Westchester Corporation to prevent clogging with debris.
7. It is agreed that Westchester Corporation will install a swale as shown red-lined on engineering drawing by Foresite Engineering revision dated 07/13/05. Swale will be at least 2 feet deep and 2 feet wide filled with coarse aggregate and a Schedule 40 4 inch perforated pipe.

Kenn Towey 10/11/05

Steve Kent 10/11/05